89-1367

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

LARRY WOLLERSHEIM,
Petitioner.

vs.

CHURCH OF SCIENTOLOGY OF CALIFORNIA,
Respondent.

On Petiton for a Writ of Certiorari to the United States Court of Appeals Second Appellate District

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QUESTION PRESENTED

Whether an organization can use the legal advantages, protections, and immunities of the First Amendment exercise clause to "legally" disadvantage adversaries **and** paradoxically* bar, impede, cloak, seal or otherwise render inadmissable or unusable, evidence that would reveal the organization to be, in fact, a counterfeit of religion and unworthy of the exercise clause's sanctuary and advantages?

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* Achieved in part, by way of an unforseen "new technologies" loophole which affects the validity of the exercise clause's "good faith" test.

PARTIES

Petitioner, Lawrence D. Wollersheim an individual.

Respondent, Church of Scientology of California, a California corporation. Known subsidiaries at time of filing. (1) The San Francisco Organization (2) The Los Angeles Organization (3) The American Saint Hill Organization (4) Advanced Organization of Los Angeles (5) FLAG Operations Liason Office(6) Flag (7) United States Guardian Office[A] (8) the Publication Organization a subsidiary of the American Saint Hill Organization (9) World Institute of Scientology Enterprises (10) Narconon.

[A] (1) - (7) as stipulated in the record Church of Scientology of California v. Comm., Docket No. 3352-78, page 386 (1984)

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TO: THE HONORABLE, THE CHIEF JUSTICE OF THE UNITED STATES SUPREME COURT AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES

Petitioner prays that a writ of certiorari be issued to review the decision of the United States Court of Appeals for the Second Appellate District.

OPINIONS BELOW

The opinion of the Court of Appeals is reproduced in Appendixes A and B. Wollersheim v. Church of Scientology of California, 212 Cal. App. 3d 872.

The decisions and order for judgment of the Superior

Court of the State of California, County of Los Angeles are reproduced in Appendix C.

JURISDICTION

The decision of the Court of Appeals was entered on July 18, 1989. On August 17, 1989 an order denying review was entered from the California Appeals Court second appellate District Division Seven. On October 26, 1989 an order denying review was entered from the California Supreme Court. On January 14, the petitioner filed an application for extension to file a writ of certiorari on or before February 23, 1990. The extension was granted on January 17, 1990 by the Supreme Court. This petition is being filed within ninety days of that date.

The jurisdiction invoked is that of the Constitution of the United States of America and the jurisdiction of the Supreme Court, in particular regarding the establishment and exercise clauses. See appendix D.

FEDERAL STATUTES INVOLVED

These are primarily Constitutional issues at stake in this case.

STATEMENT OF CASE

From the very beginning stages of this case, Wollersheim directly and indirectly asserted that Scientology is a "wolf in sheep's clothing" hiding illegitimately in the sanctuary of First Amendment's exercise clause protections and paradoxically using those same protections to cloak its real nature. Wollersheim asserted that Scientology is not a genuine religion and auditing is not a genuine religious practice. More importantly, however, Wollersheim contended and produced evidence that

Scientology was presented to him without any genuine religious overlay, setting, context, content, substance or purpose. Scientology and its expert witnesses contended otherwise.

Scientology contended throughout the case that everything written by L. Ron Hubbard for Scientology and Dianetics was copyrighted religious scripture or copyrighted religious practices, everything from Hubbard's "how to wash a car" bulletin to the "fair game" policy in which an enemy "[they] may be deprived of property or injured by any means by any Scientologist without any discipline of the Scientologist . . . may be tricked, sued, or lied to or destroyed." During the case and throughout appeal Scientology argued that the right to practice its religion either barred the charges or required a reversal of the judgment in its favor.

Wollersheim's case contended and the evidence established that Scientology's conduct toward Wollersheim occurred over a 16 year period. This conduct occurred as necessary steps in the implementation of top management's surreptitious program to use pain, coercive persuasion,[B] and ignorance to insidiously subjugate Wollersheim to Scientology's will, domination and control. While religious trappings may have been fabricated for a First Amendment defense to enemy[C] attacks, genuine religious notions were absent internally.

Wollersheim's evidence asserted that in addition to the way it was used on Wollersheim, Scientology used thought reform and coercive persuasion as their central and standardized practice to obtain members, to maintain membership, and to exercise undue influence over its members finances.

Expert witnesses for Wollersheim, Dr. Singer and Dr. Ofshe testified that it was the technological processes of coercive persuasion themselves, void of any belief or idea content,

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[B] See Appendix F for a complete explanation of the coercive persuasion technology.

[C] Wollersheim most certainly was at this time an enemy.

that interfered with Wollersheim's ability to accept or reject ideas or beliefs in a way that would be meaningfully, volitional, or informed.

Dr. Singer went on to testify that there were five major cataclysmic breakdowns caused by Scientology's coercive persuasion practices applied to Wollersheim. The fifth and final cataclysmic breakdown brought Wollersheim to nearly committing suicide.

Throughout the trial, Wollersheim's evidence and experts demonstrated auditing was inherently and intrinsicly a coercive persuasion type practice based on creating hypnotic or trance like states of increased suggestability and decreased independent judgment. Wollersheim personally testified in detail about the first hypnotic trance he was unknowingly and involuntarily placed into on the beginning communication course on "TR-O". This was his "decision point" to becoming a Scientology member. Wollersheim went on to testify that whenever he was having difficulties in Scientology he was re-audited on the even more powerful hypnotic and trance inducing practices called "The Objectives".

Wollersheim testified for approximately 22 days, 18 days of which were cross-examination. He testified as to every detail of his 1968-1980 membership and described the nature, content, substance, sequence of every alleged process, procedure and/or program conducted on him, excepting those key secret upper level techniques upon which Scientology used its religious immunities to bar. These materials were the very areas most closely associated with the five cataclysmic breakdowns and Scientology's secret internal documents where it talks about religion being an abberation that needs to be audited out.

At the law-and-motion stage, to prove its religion claim, two affidavits were submitted by Scientology. When weighed against the overwhelming weight of evidence from other prior cases like the IRS case and documents from the authorized FBI search, these two affidavits were, as Wollersheim contested,

insignificant and insufficient proof. Later, much of the evidence which Wollersheim was able to get admitted at trial, again showed Scientology as it actually operates, which, contrary to the form declarations in support of Scientology's summary adjudication motion, is both a mockery of religion and a substantial threat to the public safety, peace, and order.

"Since the trial court granted summary adjudication that Scientology is a religion and "auditing" is a religious practice, the trial proceeded none-the-less under the legal assumption that they were such.

Shackled by the courts treating Scientology as a religion, and the legal paradox of no real remedy to remove the complete "bonifide" status of a mockery of religion, Wollersheim continued to try to enter into the record evidences in other admissable ways that Scientology was a fraud operating for non-religious, commercial, and political purposes.

Wollersheim tried to enter many of the documents siezed by the FBI in its authorized search, documents that showed a clear picture of the real Scientology's secret internal purposes, policies, actions, and intentions. Since the religion issue had been decided already, many of these key documents were denied entry under the "catch all" of creating more passion than the value of the evidence. Wollersheim believed First Amendment difficulties were the real issue.

Key testimony about Scientology's religious front and how and why a Guardian Officer must be made a minister was also barred during Eddie Walter's[D] testimony. Finally, evidence that Scientology considers religion an abberation to be audited out was entered in another way, but then sealed and denied to the jury.

Judge Margolis was first to rule that Scientology was to produce Wollersheim's auditing records, guardian files, and

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[D] A witness for Wollersheim.

ethics files complete and unaltered. Scientology delayed, claiming religious privilege. Judge Swearinger, the trial court judge, ruled again that these files were not subject to the priest penitent privilege and orderded them produced. The judge later amended his order and excluded all secret upper level materials.

On the very last day of the trial, Scientology produced, out of what would have been 10 feet or more of documents, one small packing box of records which they had pre-culled at their own discretion.

The missing 9 feet of materials contained additional key proofs of: (1) coerced documents and affidavits that were used against Wollersheim at trial, signed by Wollersheim many times while in trance; (2) Evidence in their own files of fair game applied toward Wollersheim and his case; (3) the causes of the five cataclysmic breakdowns; and, (4) documents directly related to proving that one of the most central and secret teachings of the "church" of Scientology is, the very **concept** of religion and much of what we accept in the very broadest of terms to be the conceptual **content** of religion (God, the devil, Jesus Christ, Heaven, etc.) were created by an alien invader force millions of years ago. Religion itself and what we generally accept as its content were created using "electronic forces" by this invader force as a tool and an abberation to enslave and control the past population of earth. These electronically induced concepts of religion must now be audited out of the current population.

Prior to the trial, Wollersheim's fraud and misrepresentation causes of action were non-suited. The remaining major cause of action for intentional infliction of emotional injury became the centerpiece of the case which went to the jury. This claim actually cumulated four courses of conduct which together were some of the main factors which inflicted severe emotional damage on Wollersheim. These courses of conduct were: (1) subjecting Wollersheim to forms of coercive persuasion ("auditing") which aggravated an asymptomatic and dormant predispo-

sition to bipolar manic-depression;[E] (2) psychologically coercing him to "disconnect" from his family; (3) "disclosing personal information" Wollersheim revealed during auditing under a mantle of confidentiality; and, (4) conducting a retributive campaign ("fair game") against Wollersheim and particularly against his business enterprise.

Substantial evidence supported the finding that Scientology created a coercive environment and Wollersheim continued to submit to the practices of Scientology such as "disconnect" because of the powers of coercive persuasion. There was also substantial evidence presented that Scientology leaders were aware of Wollersheim's psychological vulnerability and yet continued practices during auditing sessions which caused the kinds of psychological stress that led to Wollersheim's mental breakdown. Thus, there is adequate proof the coercive persuasion aspects of auditing caused real harm to Wollersheim and that Scientology's conduct was outrageous. Wollersheim suffered and will continue to suffer from mental disorders, losses, fears, phobias, and problems.

The outrageous conduct of Scientology was made more reprehensible by the fact that the conduct was not just a matter of isolated occurrences. Scientology's conduct occurred as a part of a deliberate and intentional, extensively designed and structured pattern of such conduct, and was extensively applied as the routine!

Two important witnesses for Wollersheim's case were Laurel Sullivan and Eddie Walters. The first, Ms. Laurel Sullivan, was a member of Scientology for 15 years (1966-1981). She had worked closely with L. Ron Hubbard. She had duties and responsibilities at the top management level and was knowledgeable about the entire structure, lines of control, and

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[E] Dr. Singer testified that Wollersheim's previously dormant, completely asymptomatic chemical imbalance was exacerbated into a full blown mental disorder by Scientology's conduct towards him, particularly, on his "upper level auditing".

command of Scientology's extensive interrelated worldwide activities.

She testified extensively about Scientology's organizational structure and the manner, means, methods, policies and lines of authority through which Scientology's top management controlled and directed all Scientology organizations and activities. She also testified about the meaning and binding nature of various directives, bulletins, and policies. She completely described and explained the structure and the methods, means and operations by which the organization controlled members such as Wollersheim. She testified that all of the alleged conduct was directed and controlled by Scientology's top management. Although she was subjected to rigorous cross examination, her testimony was not impeached, discredited, contradicted or disputed by Scientology's evidence. (Laurel Sullivan, R.T. Vols. 7-9, pp. 716-1156).

Wollersheim's other key witness was Mr. Ed Walters, who became a member of Scientology in 1969-70 and underwent extensive continuous training as an auditor and was one of the few who was trained and certified to audit at any level or grade of processing/auditing up to the then highest level. Mr. Walters served in a variety of other positions from 1970 to 1978 and was a trained Guardian's Office undercover intelligence operative from 1971 to 1978. He became aware of, assisted and/or performed in a variety of illegal, improper or fraudulent Guardian's Office operations against enemies. Consistent with policy, he was ordained a minister in approximately 1971 at the beginning of his duties as an undercover intelligence operative for Guardian's Office (pursuant to policy, Wollersheim was subjected to a number of procedures and activities by the Guardian's Office, particularly Bureau I, Intelligence Bureau, from approximately 1972 to 1986).

Mr. Walters had extensive personal knowledge of the organizational structure of the Guardian's Office ("G.O."), the lines of authority, the division of responsibilities, the purpose, function and operation of the various bureaus and the use of a

"RELIGIOUS FRONT".

Bureau I ("BI") was the intelligence bureau which identified, planned and implemented the operation to identify, infiltrate, incapacitate and remove all potential threats and enemies to Scientology.

He testified that by express G.O. policies, every person or group that directly or indirectly criticized, doubted, opposed or contradicted, interfered with or threatened any activity, goal, technique or policy of Scientology was a suppressive person ("SP"). Whether the person or group unintentionally, unknowingly, or coincidentally antagonized, Scientology's fair game policy applied to the suppressive and programs and operations to handle the enemy were designed and implemented.

Bureau I located, planned, designed, implemented and coordinated the operations against SP's.

Walters testified about the role and responsibilities of Bureau I (Intelligence), Bureau II (Public Relations), Bureau III (Legal), Bureau IV (Finance), and Bureau V (Social Coordination), concerning their coordinated and interrelated operations as integral parts of programs to locate, infiltrate and disable, incapacitate and/or remove a potential danger or threat such as Wollersheim. All such people and groups were SP's, an enemy by definition and fair game.

Mr. Walters also testified that in June 1976, pursuant to specific applicable policies, Wollersheim, because of his breakdown from auditing, definitely became an SP. He was then by policy subject to fair game law.

He further testified as to the lines of authority that directed the conduct toward Wollersheim and the interrelationship of the policies that authorized and compelled the conduct.

Mr. Walters was cross-examined extensively, but his testimony and the exhibits admitted into evidence were never credi-

bly impeached, refuted, contradicted or discredited by appellant. (Edward Walters' Vols. 9-15 and 91 pp. 1157-1980; 14210-14268).

Wollersheim's parents, his sister and his former wife came from Wisconsin and testified on their personal knowledge of Scientology and Scientology's conduct towards them during and after Wollersheim's membership. They testified as to the development and progression of his strange, bizarre, and at times, violent behavior as his involvement and participation in the Scientology system increased and intensified. (Mr. Lawrence Wollersheim, Sr. R.T. Vols. 25-26 at pp. 3537-3761; Mrs. Eleanor Wollersheim, R.T. Vols. 26-27 at pp. 3761-3825; Mrs. Cynthia Wollersheim Tilson, R.T. vols. 27-28 at pp. 3826-4020).

They testified as to their observations of the manifestation and progression of a hypnotic trance and his abrupt, painful, insensitive and cold termination of any relationship, contact or association with any of them at the whim, direction and control of Scientology.

They each also described the nature, content and substance of Scientology's contacts with them during and after Wollersheim's membership. This included some knowledge of some of Scientology's efforts to find, threaten, harass, frighten and injure him. There was testimony that his parents and sister were contacted by and through various means. His sister testified as to the post-1979 visit by two of Scientology's members who informed her that Wollersheim was fair game.

Wollersheim obtained a judgment of $5,000,000.00 in compensatory damages and an assessment of $25,000,000.00 in punitive damages against Scientology, said judgment being entered on July 22, 1986.

Then the California appeals court decision reduced the compensatory damages award from $5,000,000.00 to $500,000.00, the punitive damages assessment from $25,000,000.00 to $2,000,000.00 and affirmed the judgment as

reduced.

On August 17, 1989 the California court of appeals denied a petition for rehearing but made changes in its final decision. There were two significant changes.

In the original decision, they replaced "we find it especially excessive given the nature of the outrageous conduct in this particular case" with "respondent asserts appellant's true net worth approaches 250 million not 16 million and thus the punitive damage is not excessive. However, respondent failed to prove the higher net worth figure at trial."

In the second significant change, they replaced "This appears not just excessive but preposterous" with "This ratio is well outside the permissable range established in other appellate cases."

On October 26, 1989 the Supreme Court of California turned down Wollersheim's petition.

REASONS FOR GRANTING THE WRIT

There is a legal paradox in this case regarding the exercise clause protections and advantages that is applicable in many other individual, government, and corporate cases against Scientology and other such organizations. Due in major part to this unsettled paradox, attempting to legally demonstrate that Scientology is in fact a mockery of religion has been unsuccessful.

The paradox partially exists in that there is no clear cut legal remedy to de-certify and/or completely remove **ALL** exercise clause protections once a counterfeit religion has been "established." Consequently, a hypothetical "wolf in sheep's clothing" can remain in the "sanctuary" potentially forever with-

out ever losing **all** of its considerable exercise clause, legal and financial advantages, defenses and immunities. Moreover, once "established", this hypothetical "wolf in sheep's clothing" can then deny, impede, and unfairly burden its legal adversaries using those same ill-gotten advantages to further inhibit, either piercing the "religious veil" or the seeking of redress on other legitimate matters.

Now add to this paradox the additional liability of new technologies like coercive persuasion's abilities to render the legally accepted validity of the traditional "good faith" test for granting immunity for religious representations highly questionable,[F] and the recipe for maintaining a counterfeit religion in the exercise clause sanctuary is dangerously close to perfect.

Because Scientology treats **all** of its literature and practices as copyrighted holy scripture and copyrighted religious practice not subject to courtroom evaluation, and protected by the First Amendment via the "good faith" sincerity test, and, because Scientology uses coercive persuasion as a central and standardized practice, there are very compelling reasons to carefully consider this Writ.

First, Scientology is a substantial threat to public safety, peace, and order. The state has a compelling interest in protecting children and the family institution, (See, e.g., Reynolds v. United States, supra, 98 U.S. 145, 165-166; Meyer v. Nebraska (1923) 262 U.S. 390, 399-403; Pierce v. Society of Sisters (1925) 268 U.S. 510, 534-535; Moore v. City of East Cleveland (1977) 431 U.S. 494, 503-504 [plur. opn.].), since the family almost invariably suffers great stress and sometimes incurs significant financial loss when one of its members is unknowingly subjected to coercive persuasion.[G]

[F] Where coercive persuasion is involved in creating, "good faith" sincerity is suspect. (See Appendix F).

[G] (Enroth, Youth, Brainwashing, and the Extremist Cults (1977) pp. 199-201).

In United States v. Lee 455 U.S. 252,257-258 (1982), the California Supreme Court found that "when a person is subjected to coercive persuasion without his knowledge or consent ... [he may] develop serious and sometimes irreversible physical and psychiatric disorders, up to and including schizophrenia, self-mutilation, and suicide." (See Committee on Foreign Affairs, U.S. House of Representatives Staff Report, The assassination of Representative Leo J. Ryan and the Jonestown, Guyana Tragedy [1979].)[H]

The State also has a compelling interest in the freedoms of thought, choice and speech of its citizens, freedoms which are recognized in its statutes and case law and which are basic to our democratic institutions.

These interests may include the preservation of the mental and physical health of citizens, the prevention of "religious despotism," and the protection of children or young adults whose maturation could be impaired by psychological assaults.

The dangerous conduct demonstrated by Wollersheim's evidence in this case was reflective of Scientology's REAL nature and operations, and this conduct has not just been directed at Wollersheim. Scientology, through its Guardian Office, was to remove all obstacles to Scientology's advancement, and was to accomplish this illegally, as reflected by express orders to frame, smear or blackmail "supressive persons", for example, judges who had ruled against Scientology's position, including Judge Jones, Oregon, 1981; Judge Grey, U.S.D.C., 1976, Judge Brown, California Superior Court, 1976; Judge Krentzman, U.S.D.C., Florida, 1976; Justice J. Skelly Wright, D.C., 1974. Wollersheim's opposition also included citation to the 282-page "Stipulation of Evidence", signed in 1979 by nine of petitioner's upper echelon officials when they pleaded guilty to the extensive burglaries, forgeries, "infiltration", "obstruction of justice" and other crimes against the United States carried on by petitioner

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[H] U.S. House of Representatives Staff Report. "The Assasination of Representative Leo J. Ryan and the Jamestown Guyana Tragedy (1979).

throughout the 70's against over 100 Federal agencies, including the IRS, Department of Justice, Department of Defense, and U.S. Coast Guard. (See United States v. Hubbard et al., Crim. No. 78-401, D.C. D.C. (1979), Hon. Charles R. Richey.

Executive and judicial inquiries, here and abroad,[1] likewise reveal the real "church" of Scientology. In U.S. v. Heldt, et al., 668 F.2d 1238 (D.C. Cir. 1980) cert. denied 456 U.S. 926 (1982), the facts showed that "church" personnel had secreted and destroyed documentary evidence of crime, 668 F.2d at 1243, n.8, had committed illegal break-ins and theft, id. at 1244, 1247, 1248, had electronically bugged government offices, ibid, had lied to federal investigators and a grand jury, id. at 1246, 1247, 1248, 1249, 1253, had suborned perjury, id. at 1247, 1253, had forcibly restrained, kidnapped, handcuffed and gagged a potentially adverse witness, id. at 1244, 1273, and had formulated "conspiracies to obstruct justice, steal government property, burglarize, bug, harbor fugitives from justice, and commit and suborn perjury before the grand jury," id., n. 27 at 1258.

In the 1984 case of Church of Scientology of California v. Armstrong, (No. C 420153 Cal. Super. Ct. June 20, 1984), the court found the record to be "replete with evidence" that the Church or its minions "engaged in intimidation or other physical or psychological abuse if it suits their ends." Id. at 8. The court agreed that Scientology "is nothing in reality but a vast enterprise to extract the maximum amount of money from its adepts by (use of) pseudo-scientific theories . . . to estrange adepts from their families and to exercise a kind of blackmail against persons who do not wish to continue with their sect." Ibid.

In U.S. v. Article or Device, supra, the court examined

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[1] "Inquiry in to the practice and effects of Scientology" prepared for the House of Commons in the United Kingdom (1971) "Board of inquiry into Scientology" presented to both houses of parliment, Victoria Australia (1963), French conviction of Hubbard in absentia for fraud, Spain's recent tax fraud case and the other references in this document.

Scientology's claim that E-meter auditing improves one's health and abilities. The court ruled that Scientology's claims were "quackery," "extravagant", and "false." id. at 359, "in short, a fraud with absolutely no scientific or medical basis in fact." Ibid. The court further held that most of the materials sold and distributed in connection with "auditing" were "devoid of any religious overlay or reference," id. at 361, but instead are "replete with false medical and scientific claims." Ibid.

Recently, the Ninth Circuit affirmed the Tax Court's finding that the "church" of Scientology is not worthy to qualify for the federal tax exemption granted to truly charitable and religious organizations. Church of Scientology v. Comm., supra, 823 F.2d 1310.

Secondly, within this legal paradox the government may be acting contrary to the "benevolant neutrality " concept of the First Amendment by giving the exercise advantages to organizations that use the technologies of thought reform and coercive persuasion to interfere with the rights of its citizens to excercise their own free and informed choice. Through indirect subsidy the state may even be assisting in compelling its citizens to adopt a particular view or affiliate with a particualr organization.

The government also indirectly could be promoting one religion over another by giving the exercise advantages to organizations that use thought reform and coercive persuasion as central practices to acquire new members, maintain memberships, and obtain UNDUE INFLUENCE over their members' assets and finances. Almost all other religions would most certainly decline to use such reprehensible techniques as beyond all decency and beyond what many faiths could consider fair treatment for what is often believed to be the Supreme Being's greatest gift to man, "**FREE WILL**".

The above situation could well be a "high" technology twist on Larson v. Valente, 456 U.S. 228, 246-247 n.23 (1983) (statute that "distinguishes between 'well-established churches' . . . and 'churches which are new and lacking in a constituency'"

held unconstitutional).

In that, the effect would be to favor and advantage a newer aggressively "proselytizing" organization using coercive persuasion techniques over the older more traditional religions who would not use them.

Next, beginning almost immediately after Dianetics and Scientology appeared in the early 50's there has been a growing and intensifying national and international record of contention with Scientology's assertion it is a bonafide religion. For almost 40 years this re-occuring legal question has not been quashed or diminished in spite of all the legal paradoxes it must first overcome. Millions of dollars in non-taxpayer and taxpayer money has been spent investigating and litigating with Scientology up to, but not beyond the threshold of this paradox.

Absence of clear-cut precedent on this specific legal paradox involving the First Amendment has hindered lower court judges on this case and many other cases in knowing how to "fairly" rule, in light of **ALL** the evidence, regarding whether Scientology is a genuine religion. In Wollersheims's California court of appeals decision it was stated, "... evidence was not introduced at the trial on the specific issue of whether Scientology is a religion. Given that vacuum of information, it would be presumptuous of this court to attempt a definitive decision on this vital question. We note other appellate courts have observed that this remains a very live and interesting question."

Then Decision goes on to cite Founding Church of Scientology v. United States (D.C. Cir. 1969), 409 F.2d. 1196 and Founding Church of Scientology v. Webster (D.C. Cir. 1986), 802 f.2d. 1448, 1451 (1948) ["whether Scientology is a religious organization, a for-profit private enterprise, or something far more extraordinary [is] an intriguing question that this suit does not call upon us to examine . . . ."].)

In Founding Church of Scientology of Washington, D.C. v. United States, 409 F.2d 1146 (1160-1161)D.C. Cir.), cert.

denied, 396 U.S. 915 (1969), the D.C. circuit expressly lamented that Scientology's claim of religious practice was not contested or disputed. As that court implied, the religiosity should have been contested and with good reason.

Moreover, following that circuit's remand, the subsequent trial resulted in another decision. That final decision described Scientology as it was in practice then. It was more organized but no different throughout the 1970's. That decision **also** lamented the government's failure to earlier contest the religiosity claim United States v. Article or Device, 333 F. supp. 357 (1971).

Thirdly, from a constitutional perspective, there are additional good reasons for accepting this petition. "What is and what is not a religion is a matter of delicacy and courts must be ever careful not to permit their own moral and ethical standard to determine religious implications of beliefs and practices of others.

Subtle and difficult though the inquiry may be it should not be avoided for reasons of convenience. There is need to develop a sharper line of demarcation between religious activities and personal codes of conduct that lack spiritual import. Those who seek the constitutional protections for their participation in an establishment of religion and freedom to practice its beliefs must not be permitted the special freedoms this sanctuary may provide merely by adopting religious nomenclature and cynically using it as a shield to protect them when participating in antisocial conduct that otherwise stands condemned." (U.S. v. Kuch 288 F. Supp. 439 1968).

Justice Welsh also helped mark out some of the outer boundaries of religion by restricting non-religious beliefs to those that rest "solely upon considerations of policy, pragmatism, or expediency. ("Welsh v. U.S. 398 U.S. 333 1970).

Furthermore, the government may be establishing Scientology to the detriment of its other citizens with the exer-

cise clause's considerable advantages on top of Scientology's own devastating "internal legal policies". These "internal legal policies" are used to suppress, intimidate and harass its perceived enemies. In his own writings L. Ron Hubbard, Founder of Scientology, set forth the following policy. He wrote:

"The purpose of a lawsuit is to harass and discourage rather than to win."

At another point Hubbard wrote:

"Don't ever defend. Always attack. Find or manufacture enough threat against them to cause them to sue for peace. Originate a black PR campaign to destroy the person's repute and to discredit them so thoroughly they will be ostracized. Be alert to sue for slander at the slightest chance so as to discourage the public presses from mentioning Scientology."

In one of his books, Hubbard gives even more explicit instructions about how lawsuits should be filed against people even against the advice of counsel. He wrote:

"The law can be used very easily to harass, and enough harassment on somebody who is simply on the thin edge anyway, will knowing that he is not authorized, will generally be sufficient to cause his professional decease. If possible, of cource, ruin him utterly....." (From A Manual on the Dissemination of Material (1955), by L. Ron Hubbard).

It is now beyond dispute that this directive has been reemphasized, reinforced and refined by Scientology in the years since 1955. The policy, as stated in HCO Policy Letter of 25 February, 1966, "Attacks on Scientology" is clear:

"NEVER agree to an investigation of Scientology. ONLY agree to an investigation of the attackers.

"This is correct procedure: (1) Spot who is attacking us. (2) Start investigating them promptly for FELONIES or worse,

using our own professionals[J], not outside agencies. (3) Double curve our reply by saying we welcome an investigation of them. (4) Start feeding lurid, blood, sex, crime actual evidence on the attackers to the press."

"Don't ever tamely submit to an investigation of us. Make it rough, rough on attackers all the way."

"You can get "reasonable about it" and lose... so BANISH all ideas that any fair hearing is intended and start our attack with their first breath. Never wait. Never talk about us—only them. Use their blood, sex, crime to get headlines. Don't use us."

Thirty years ago, Hubbard directed a member to:

". . . cause blue flame to dance on the courthouse roof until everyone has apologized profusely for having dared to become so adventurous as to arrest a Scientologist who, as a minister of the church, was going about his regular duties."

Scientology's supression of adversaries from the legitimitizing First Amendment safe sanctuary has been expanded. Hubbard/Scientology realized that many people cannot afford the financial burden of defending themselves in litigation. As his own financial resources grew, he was able to afford lawyers in cities all over the world to do his bidding. He launched a campaign of legal terrorism against all who dared to say anything about Scientology. In a document written by Jane Kember, at the time one of the highest ranking members of the Guardian's Office, there is a blunt discussion of how knowingly frivolous lawsuits can be used to drive publishers into submission. Kember states that since in the U.S. a person who loses a lawsuit is not required to pay the opponents' costs, frivolous suits are an effective means of imposing unbearable financial burdens on publishers and thereby suppressing publication of material on Scientology.

[J] During Wollersheim's period in Scientology this was done by "ordained ministers" of the Guardian's Office.

Looking at the **APPARENCY** of Scientology versus its actions, results, and history, one sees two Scientology's. One, the inner secret and genuine Scientology and two, the outer Scientology cloaked with counterfeit religiosity. In this case, through the paradox of the exercise clause's legitimate self-perpetuating mechanisms, this schizophrenic contradiction has been unresolvable because the counterfeit has been protected as a by-product of protecting the bonafide, a result reasonably neither envisioned or believably intended by our constitutional forefathers.

"There will be no immunity if religion is merely used as a protective mantle, or cloak to insulate conduct". (People v. Woody [61 Cal, 2d.] p 718).

If that is true for conduct, should it not be even more true for removing a "bonafide" religion's status, if "counterfeit religiosity" is cleverly used as a protective mantle or cloak to insulate **itself** from discovery as a mockery?

This apparency and cloaking strategy shows itself in U.S. v. Article and Device. That court found that Scientology was oft-times secular or scientific in presentation and operation and other times apparently religious. (United States v. Article or Device, 333 F. Supp. 357 [1971].)

Scientology has been wearing its cloak and mantle of counterfeit religiosity since the early 50's when it switched from selling psuedo psychotherapy and changed its organizational structure from a commercial to a religious corporation. At the Clearwater Commission hearings, the son of Scientology's founder, L. Ron Hubbard, Jr., who had himself been a top-ranking Scientologist, testified that the reason his father began claiming Scientology is a religion was to escape problems he was having with courts, the IRS and the American Medical Association, and to make money. (Tr. at Vol. I, pp. 286, 276. Clearwater Commission Reports).

Scientology's evolution into becoming a "religion" was

not a "good faith" evolution of evolving religious tenents but was driven by legal, safety, and commercial motives. Over the ensuing years, this cloak has been deliberately saturated and soaked with thicker and thicker layers **of deliberately** confusing counterfeit religiosity.

When the Commissioners of the City of Clearwater convened public hearings on Scientology on May 5-10, 1982, they received documentary and testimonial evidence with respect to the operation, activities and conduct of the Church of Scientology. Based upon the sworn testimony of witnesses, affidavits, state and federal court decisions and miscellaneous documents reviewed and considered, the Commission made the following factual recitation:[K] Evidentiary Fact: The Church of Scientology is currently engaged in a nationwide conspiracy to impede and obstruct municipal, state and federal taxing authorities, by adopting a religious and charitable guise to avoid payment of taxes.

"They (the public) want ministers. We will show them what ministers look like." (1-41) Use of ministerial garb to convey appearance of religion. (1-43) Scientology's internal policy states: "Churches are looked upon as reform groups. Therefore, we must act like a reform group." (1-196) "Church" policy instructs members to lie to inquiring officials. (1-226,227) Scientology's religious image check list is designed to falsely portray a religious image to mislead public officials. (2-238,239)

The Church of Scientology has nothing to do with religion. The Church did not adopt the religious guise until it was necessary to seek First Amendment protection. (4-405)

Directly or indirectly, the paradox affecting Wollersheim's case always was, whether Scientology qualifies as a religion. At the law-and-motion stage, a judge granted summary adjudication on this issue. That court ruled Scientology indeed was a religion. And at the trial stage, another judge rein-

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[K] References are to volume and page of the Hearings Transcript.

forced this ruling by submitting the case to the jury with an instruction that Scientology is a religion.

But it was just two affidavits, one by Scientology's own Bruce Gaines, a Guardian Officer "minister" and the other an outside religion expert-that became the weight which tipped the balance at the law-and-motion stage which allowed Scientology, in Wollersheim's case, to assume the legal privileges and sanctuary of the exercise clause. Despite Wollersheim's protest and attempts to disqualify these affidavits as being tainted by Guardian Office involvement, they were still relied upon for the ruling.

At the law-and-motion stage, the trial court also granted summary adjudication that "auditing" was a "religious practice" of Scientology.

Wollersheim contended that auditing was not a religious practice case and that the court below did not summarily adjudicate that "auditing" was a religious practice. Instead, that comment was made by the court in the process of considering and denying certain Scientology motions in limine. That occurred in late October, 1985, when the case was pending in the first trial court to which it was assigned for trial, just before the trial was reassigned, on November 7, 1985, to the court that conducted the actual trial.

Accordingly, the procedures, protections and authority of Section 437(c) of the Code of Civil Procedure were not applicable to the motions in limine and that court's reference to "auditing" as a religious practice did not rise to the level of a **binding** summary adjudication of an undisputed fact.

Later in limine, an order was given that because of religious immunities no inquiring into auditing could be made by our experts regarding its effectiveness or from the experiences of other people who went through auditing similar to Wollersheim's.

On July 22, 1986 the jury issued a **unanimous** judgment after 4-1/2 months of trial based on what they saw, heard, examined as evidence, and found to be factual beyond a reasonable doubt. They issued a 5 million dollar compensatory award and a 25 million dollar punitive damage award knowing full well that Scientology "claimed" most vehemently that they only had an 18 million dollars net worth. The jury chose to ignore the "good faith" sincerity of Scientology's balance sheet prepared in late April 1986 and chose instead to believe evidence Wollersheim entered which exposed a conveyance of approximately 90% of the assets, an estimated 250 million dollars, out of the church of Scientology of California starting just after Wollersheim filed his lawsuit and ending just prior to beginning Wollersheim's trial. This conveyance was coincidentally concurrent with Scientology's attorney's on-the-record acknowledgement that Scientology had accumulated approximately 250 million dollars in pending lawsuits.

In spite of the jury being denied many key evidences demonstrating Scientology's reprehensibility and vile mockery of bonafide religion they saw and heard enough of the admitted evidences to determine, that the punitive damage award must be substantial enough so as to deter and purge those types of outrageous behaviors from ever re-occurring in the civilized society of America.

Reduction of punitives to two million dollars to an organization whose conservative estimated net worth is from 1/2 billion to 1 billion dollars could be reasonably seen as rendering impotent the very intention behind punitives. Had not Wollersheim been unfairly hindered and burdened by the counterfeit religion paradox and denied key evidences, how much more would the appeals judges, realizing the additional mockery, have punished Scientology?

Wollersheim respectfully submits that Scientology has previously been assessed punitive damages which were reduced in Allard v. Church of Scientology in 1979. (Allard v. Church of Scientology of

California, 58 Cal.App. 3d 439 [1976].) As a consequence, and most importantly, Scientology has not been deterred whatsoever in continuing its pattern of outrageous and oft-times illegal conduct. The jury's punitive award was justified and the socially-purging purpose behind punitive damages should now finally be confronted and accomplished with respect to Scientology. (Schroeder v. Auto Driveway Company, 11 Cal. 3d 908; BAJI 1471).

Furthermore, Wollersheim offered to prove that Scientology's net worth exceeded $500,000,000.00 (500 million dollars) at the time. Moreover, Wollersheim's evidence revealed that at just one of Scientology's many locations, Scientology was receiving over $1,000,000.00 (1 million dollars) cash per week for NOTS auditing at the Flag base in Clearwater in 1978 and 1979. Under these figures, Wollersheim's total jury judgment would be approximately 6% of its conservative estimated net worth or 20% of its 1 year estimated annual gross income from just one location.

From the state of the evidence as presented to and accepted by the jury, Scientology was an incredible money-making machine, throughout the time relevant to the Wollersheim case. As such, the jury was entitled to accept it or to reject the truth of Scientology's balance sheet. Can it be really reasonable to assume the jury issued their unanimous verdict after a 4-1/2 month trial only to have it looked at as mathematically preposterous?

Moreover, the trial judge, who observed the witnesses, the evidence, and the trial first hand, denied Scientology's post trial motions for a new trial and rejected their excess damage claims in a remititur of damages. In addition to the unanimous jury verdict, such a determination by the trial court is deserving of great weight on appellate review of the judgment and reasonably should have been accorded greater weight than that apparently given it in the Decision. (Koyer v. McComber, 12 Cal. 2d 175 at p. 182 [1938] and Schroeder v. Auto Driveway Co., 11 Cal. 3d 908 at 918 [1974].)

In closing, in 1982 at the Supreme Court of Victoria, during its Board of Inquiry into Scientology, Australian Justice Brookings made a statement which may continue to be a harbinger of this paradox until it is resolved ". . . it is none-the-less clear that the teaching of Scientology and the practice of Scientology will result in the commission of many offenses and may well result in the commission of many others." (The Church of New Faith v. The Commissioner of Payroll Tax May 5, 1982 Decision).

From a secret document siezed in the authorized search on the "church" of Scientology's Guardian Offices, one sees the CORE of the **GENUINE** Scientology's real intentions:

"The vital targets on which we must invest most of our time are: (T1) Depopularizing the enemy to a point of total obliteration. (T2) Taking over the control or allegiance of the heads of proprietors of all news media. (T3) Taking over the control or allegiance of key political figures. (T4) Taking over the control or allegiance of those who monitor international finance and shifting them to a loss precarious finance standard." (From the document headed "Targets" FBI authorized search documents).

CONCLUSION

I respectfully ask that this petition be granted for writ of certiorari for all the reasons stated previously, for all the victims of Scientology, and the hope of protecting the sanctuary of the establishment and exercise clauses of the U.S. Constitution from uses antithetical to the intentions of our constitutional forefathers.

Respectfully Submitted
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Dated February 22, 1990

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APPENDIX

APPENDIX A

IN THE COURT OF APPEAL OF
THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION SEVEN

Civ. No. B023193 (LASC No. C332827)

Larry Wollersheim,
Plaintiff and Respondent,

v.

Church of Scientology of California,
Defendant and Appellant.

Appeal from the Superior Court of the State of California
for the County of Los Angeles
Judge Ronald Swearington

Argued January 5, 1989 - Decided July 18, 1989

Before Earl Johnson, Mildred L. Lillie
and Fred Woods.

APPEAL from a judgment of the Superior Court of Los Angeles County. Ronald Swearinger, Judge. Modified, affirmed in part and reversed in part.

Rabinowitz, Boudin, Standard, Krinsky & Lieberman and Eric M. Lieberman and Terry Gross, Lenske, Lenske &

Heller and Lawrence E. Heller, and Michael Lee Hertzberg for Defendant and Appellant.

Green, O'Reilly, Broillet, Paul, Simon, McMillan, Wheeler & Rosenberg and Charles B. O'Reilly for Plaintiff and Respondent.

Boothby, Ziprick & Yingst and William F. Ziprick, Lee Boothby and James M. Parker as Amicus Curiae on behalf of Defendant and Appellant.

This appeal arises after a jury awarded $30 million in compensatory and punitive damages to a former member of the Church of Scientology (the Church). The complaint alleged appellants intentionally and negligently inflicted severe emotional injury on respondent through certain practices, including "auditing," "disconnect," and "fair game." Since the trial court granted summary adjudication that Scientology is a religion and "auditing" is a religious practice, the trial proceeded under the assumption they were. We conclude there was substantial evidence to support a factual finding the "auditing," as well as other practices in this case, were conducted in a coercive environment. Thus, none of them qualified as "voluntary religious practices" entitled to constitutional protection under the First Amendment religious freedom guarantees. At the same time, we conclude both the compensatory and punitive damages the jury awarded in this case are excessive. Consequently, we modify the judgment to reduce both of these damage awards.

FACTS AND PROCEEDINGS BELOW

Construing the facts most favorably to the judgment, as we must, respondent Larry Wollersheim was an incipient manic-depressive for most of his life. Appellants Scientology and its leaders were aware of Wollersheim's susceptibility to this mental disorder. What appellants did to him during and after his years in Scientology aggravated Wollersheim's mental condition, driving him into deep depressive episodes and causing him severe mental anguish. Furthermore, Scientology engaged in a practice of

retribution and threatened retribution—often called "fair game"—against members who left or otherwise posed a threat to the organization. This practice coerced Wollersheim into continued participation in the other practices of Scientology which were harming him emotionally.

Wollersheim first became acquainted with Scientology in early 1969 when he attended a lecture at the "Church of Scientology of San Francisco." During the next few months he completed some basic courses at the San Francisco institution. He then returned to his home state of Wisconsin and did not resume his scientology training for almost two years.

When Wollersheim did start again it was at the appellant, Church of Scientology of California, headquartered in Los Angeles. From 1972 through 1979 Wollersheim underwent "auditing" at both the basic and advanced levels. In 1973 he worked several months as a staff member at the Church of Scientology Celebrity Center located in Los Angeles. In 1974, despite his repeated objections, Wollersheim was persuaded to participate in auditing aboard a ship maintained by Scientology. While on the ship, Wollersheim was forced to undergo a strenuous regime which began around 6:00 A.M. and continued until 1:00 the next morning. Further, Wollersheim and others were forced to sleep nine deep in the ship's hold. During his six weeks under these conditions, Wollersheim lost 15 pounds.

Wollersheim attempted to escape from the ship because he felt he "was dying and losing [his] mind." His escape was thwarted by Scientology members who seized Wollersheim and held him captive until he agreed to remain and continue with the auditing and other religious practices taking place on the vessel. One of the psychiatric witnesses testified Wollersheim's experience on the ship was one of five cataclysmic events underlying the diagnosis of his mental illness and its cause.

At another stage Scientology auditors convinced him to "disconnect" from his wife and his parents and other family members because they had expressed concerns about

Scientology and Wollersheim's continued membership. "Disconnect" meant he was no longer to have any contact with his family.

There also was evidence of a practice called "freeloader debt." "Freeloader debt" was accumulated when a staff member received Church courses, training or auditing at a reduced rate. If the member later chose to leave, he or she was presented with a bill for the difference between the full price normally charged to the public and the price originally charged to the member. Appellants maintained a "freeloader debt" account for Wollersheim.

During his years with Scientology Wollersheim also started and operated several businesses. The most successful was the last, a service which took and printed photographic portraits. Most of the employees and many of the customers of this business were Scientologists.

By 1979, Wollersheim's mental condition worsened to the point he actively contemplated suicide. Wollersheim began experiencing personality changes and pain. When the Church learned of Wollersheim's condition, Wollersheim was sent to the Flag Land Base for "repair."

During auditing at Flag Land Base, Wollersheim's mental state deteriorated further. He fled the base and wandered the streets. A guardian later arranged to meet Wollersheim. At that meeting, the guardian told Wollersheim he was prohibited from ever speaking of his problems with a priest, a doctor or a psychiatrist.

Ultimately Wollersheim became so convinced auditing was causing him psychiatric problems he was willing to risk becoming a target of "freeloader debt" and "fair game." Evidence was introduced that, at least during the time relevant to Wollersheim's case, "fair game" was a practice of retribution Scientology threatened to inflict on "suppressives," which included people who left the organization or anyone who could pose a threat to the organization. Once someone was identified

as a "suppressive," all scientologists were authorized to do anything to "neutralize" that individual—economically, politically, and psychologically.

After Wollersheim left the organization Scientology leaders initiated a "fair game" campaign which among other things was calculated to destroy Wollersheim's photography enterprise. They instructed some Scientology members to leave Wollersheim's employ, told others not to place any new orders with him and to renege on bills they owed on previous purchases from the business. This strategy shortly drove Wollersheim's photography business into bankruptcy. His mental condition deteriorated further and he ended up under psychiatric care.

Wollersheim thereafter filed this lawsuit alleging fraud, intentional infliction of emotional injury, and negligent infliction of emotional injury. At the law-and-motion stage, a trial court granted summary adjudication on two vital questions. It ruled Scientology is a religion and "auditing" is a religious practice of that religion.

During trial, Wollersheim's experts testified Scientology's "auditing" and "disconnect" practices constituted "brain-washing" and "thought reform" akin to what the Chinese and North Koreans practiced on American prisoners of war. They also testified this "brain-washing" aggravated Wollersheim's bipolar manic depressive personality and caused his mental illness. Other testimony established Scientology is a hierarchical organization which exhibits near paranoid attitudes toward certain institutions and individuals—in particular, the government, mental health professions, disaffected members and others who criticize the organization or its leadership. Evidence also was introduced detailing Scientology's retribution policy, sometimes call "fair game."

After the evidence was heard, the trial judge dismissed the fraud count but allowed both the intentional and negligent infliction of emotional injury counts to go to the jury. The jury, in turn, returned a general verdict in favor of plaintiff on both

counts. It awarded $5 million in compensatory damages and $25 million in punitive damages. The motion for new trial was denied and appellants filed a timely appeal.

DISCUSSION

Appellants raise a broad spectrum of issues all the way from a technical statute of limitations defense to a fundamental constitutional challenge to this entire species of claims against Scientology. If the narrower grounds of appeal had merit and disposed of the case we could avoid confronting the difficult constitutional questions. But since they do not we must consider Scientology's religious freedom claims.

I. THERE IS SUBSTANTIAL EVIDENCE TO SUPPORT WOLLERSHEIM'S CLAIM FOR INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

The cause of action for intentional infliction of emotional injury formed the centerpiece of the case which went to the jury. This claim actually cumulates four courses of conduct which together allegedly inflicted severe emotional damage on the psychologically weak Wollersheim. These courses of conduct are: (1) subjecting Wollersheim to forms of "auditing" which aggravated his predisposition to bipolar mania-depression; (2) psychologically coercing him to "disconnect" from his family; (3) "disclosing personal information" Wollersheim revealed during auditing under a mantle of confidentiality; and, (4) conducting a retributive campaign ("fair game") against Wollersheim and particularly against his business enterprise.

The tort of intentional infliction of emotional distress was created to punish conduct "'exceeding all bounds usually tolerated by a decent society, of a nature which is especially calculated to cause, and does cause, mental distress.'" (Agarwal v. Johnson (1979) 25 Cal.3d 932, 946.) A prima facie case requires: (1) outrageous conduct by the defendant; (2) an intention by the defendant to cause, or the reckless disregard of the probability of causing, emotional distress; (3) severe emotional

distress; and (4) an actual and proximate causation of the emotional distress. (Nally v. Grace Community Church (1988) 47 Cal.3d 278, 300.)

"Behavior may be considered outrageous if a defendant (1) abuses a relation or position which gives him power to damage the plaintiff's interest; (2) knows the plaintiff is susceptible to injuries through mental distress; or (3) acts intentionally or unreasonably with the recognition that the acts are likely to result in illness through mental distress." (Agarwal v. Johnson, supra, 25 Cal.3d at p. 946.)

There is substantial evidence to support the jury's finding on this theory. First, the Church's conduct was manifestly outrageous. Using its position as his religious leader, the Church and its agents coerced Wollersheim into continuing "auditing" although his sanity was repeatedly threatened by this practice. (See pp. 29-33, infra.) Wollersheim was compelled to abandon his wife and his family through the policy of disconnect. When his mental illness reached such a level he actively planned his suicide, he was forbidden to seek professional help. Finally, when Wollersheim was able to leave the Church, it subjected him to financial ruin through its policy of "fair game".

Any one of these acts exceed the "bounds usually tolerated by a decent society," so as to constitute outrageous conduct. In aggregate, there can be no question this conduct warrants liability unless it is privileged as constitutionally protected religious activity. (See pp. 11-17, infra.)

Second, the Church's actions, if not wholly calculated to cause emotional distress, unquestionably constituted reckless disregard for the likelihood of causing emotional distress. The policy of fair game, by its nature, was intended to punish the person who dared to leave the Church. Here, the Church actively encouraged its members to destroy Wollersheim's business.

Further, by physically restraining Wollersheim from leaving the Church's ship, and subjecting him to further auditing

despite his protests, the Church ignored Wollersheim's emotional state and callously compelled him to continue in a practice known to cause him emotional distress.

Third, Wollersheim suffered severe emotional distress. Indeed, his distress was such that he actively considered suicide and suffered such psychiatric injury as to require prolonged professional therapy. (See Fletcher v. Western National Life Ins. Co. (1970) 10 Cal.App.3d 376, 397 [severe emotional distress "may consist of any highly unpleasant mental reaction such as fright, grief, shame, humiliation, embarrassment, anger, chagrin, disappointment or worry"].)

Finally, there is substantial evidence the Church's conduct proximately caused the severe emotional distress. Wollersheim's bankruptcy and resulting mental distress was the direct result of the Church's declaration that he was fair game. Additionally, according to the psychiatric testimony auditing and disconnect substantially aggravated his mental illness and triggered several severe depressive episodes.

In sum, there is ample evidence to support the jury's verdict on Wollersheim's claim for intentional infliction of emotional distress. This, however, does not conclude our inquiry. As we discuss below, Wollersheim's action may nonetheless be barred if we conclude the Church's conduct was protected under the free exercise clause of the First Amendment.

II. CONSTITUTIONAL RELIGIOUS FREEDOM GUARANTEES DO NOT IMMUNIZE SCIENTOLOGY FROM LIABILITY FOR ANY OF THE ACTIONS ON WHICH WOLLERSHEIM'S INTENTIONAL INFLICTION OF EMOTIONAL INJURY CAUSE OF ACTION IS BASED

Scientology asserts all four courses of conduct comprising the intentional infliction claim are forms of religious expression protected by the Freedom of Religion clauses of the United States and California Constitutions. We conclude some would not be protected religious activity even if Wollersheim freely

participated. We further conclude none of these courses of conduct qualified as protected religious activity in Wollersheim's case. Here they occurred in a coercive atmosphere appellants created through threats of retribution against those who would leave the organization. To explain our conclusion it is necessary to examine the parameters and rationale of the religious freedom provisions in some depth.

A. The Basic Principle of the "Free Exercise" Clause

Religious freedom is guaranteed American citizens in just 16 words in the First Amendment. "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; . . ." (U.S.Const., Amend. I, italics added.[1].)

When it was adopted, the First Amendment only applied to the federal government, not the states. (U.S. Const., 1st Amen. [Congress shall make no law . . ."], emphasis added; see Permoli v. First Municipality (1845) 44 U.S. 589, 609.) However, following ratification of the Fourteenth Amendment, the First Amendment protections became enforceable against the states via the Fourtheenth Amendment's due process clause. (California v. Grace Brethern Church (1982) 457 U.S. 393, 396 fn. 1; Everson v. Board of Education (1947) 330 U.S. 1, 8.)

"[T]he application of tort law to activities of a church or its adherents in their furtherance of their religious belief is an exercise of state power. When the imposition of liability would result in the abridgement of the right to free exercise of religious beliefs, recovery in tort is barred." (Paul v. Watchtower Bible & Tract Soc. of New York (9th Cir. 1987) 819 F.2d 875, 880; accord Molko v. Holy Spirit Assn. (1988) 46 Cal.3d 1092, 1114 ["judicial sanctioning of tort recovery constitutes state action

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[1] All discussion in this opinion as to the freedom of religion provisions of the U.S. Constitution applies also to appellants' claims under article I, section 4 of the California Constitution which guarantees "[f]ree exercise and enjoyment of religion without discrimination or preference."

sufficient to invoke the same constitutional protections applicable to statutes and other legislative actions"]; see New York Times Co. v. Sullivan (1964) 376 U.S. 254, 277.)

As can be seen, the First Amendment creates two very different protections. The "establishment clause"—actually an "anti-establishment clause"—guarantees us the government will not use its resources to impose religion on us. The "free exercise clause," on the other hand, guarantees us government will not prevent its citizens from pursuing any religion we choose.

The "establishment clause" comes into play when a government policy has the effect of promoting religion—as by financing religious schools or requiring religious prayers in public schools, and the like. These policies violate the establishment clause unless they survive a three-part test. They must have a secular purpose. Their primary effects must be ones which neither advance nor inhibit religion. And they must avoid any excessive entanglements with religion. (Lemon v. Kurtzman (1971) 403 U.S. 602, 612-613; see also Committee for Public Education v. Nyquist (1973) 413 U.S. 756, 773; Abington School Dist. v. Schempp (1963) 374 U.S. 203, 222.) The "free exercise clause", in contrast to the "establishment clause," was adopted without debate or comment when the First Congress deliberated the Bill of Rights. (Malbin, Religion and Politics: The Intentions of the Authors of the First Amendment (1976).) Thus the courts have turned to other writings by those responsible for the Bill of Rights, especially James Madison and Thomas Jefferson, to divine the meaning of "free exercise of religion."

The subsequent cases interpreting these four words make it clear that while the free exercise clause provides absolute protection for a person's religious beliefs, it provides only limited protection for the expression of those beliefs and especially actions based on those beliefs. (Cantwell v. Connecticut (1940) 310 U.S. 296, 303-304.) Freedom of belief is absolutely guaranteed, freedom of action is not. Thus government cannot constitutionally burden any belief no matter how outlandish or dangerous. But in certain circumstances it can burden an expres-

sion of belief which adversely affects significant societal interests. To do so, the burden on belief must satisfy a four-part test: First, the government must be seeking to further an important—and some opinions suggest a compelling—state interest. Secondly, the burden on expression must be essential to further this state interest. Thirdly, the type and level of burden imposed must be the minimum required to achieve the state interest. Finally, the measure imposing the burden must apply to everyone, not merely to those who have a religious belief; that is, it may not discriminate against religion.

A straightforward exposition of three prongs of this test is found in United States v. Lee (1981) 455 U.S. 252, 257-258 where the Supreme Court held: "The state may justify a limitation on religious liberty by showing that it is essential to accomplish an overriding governmental interest. (Citations omitted.)" All four are mentioned in Braunfeld v. Brown (1961) 366 U.S. 599, 607: "If the purpose of effect of a law is to impede the observance of one or all religions or is to discriminate invidiously between religions, that law is constitutionally invalid . . . . But if the State regulates conduct by enacting a general law within its power, the purpose and effect of which is to advance the State's secular goals, the statute is valid despite its indirect burden on religious observance unless the State may accomplish its purpose by means which do not impose such a burden." (See also Thomas v. Review Bd., Ind. Empl. Sec. Div. (1981) 450 U.S. 707, 717-718; Wisconsin v. Yoder (1972) 406 U.S. 205, 220; Gillette v. United States (1971) 401 U.S. 437, 462; Sherbert v. Verner (1963) 374 U.S. 398, 402-403; Cantwell v. Connecticut, supra, 310 U.S. at pp. 304-305.)

A review of the Supreme Court's "free exercise" rulings also makes it apparent the four critical factors are interrelated. Roughly speaking, the heavier the burden the government imposes on the expression of belief and the more significant the particular form of expression which is burdened, the more important the state interest must be. Or to put it the other way around, the more important the interest the state seeks to further, the heavier the burden it can constitutionally impose on the more

important forms of expressing religious belief. Thus, only the most compelling of state interest—such as the preservation of life of the state itself—will justify an outright ban on an important method of expressing a religious belief. (See, e.g., Reynolds v. United States (1878) 98 U.S. 145, 164 [polygamy can be outlawed even though a central religious tenet of the Mormon religion because it "has always been odious among the northern and western nations of Europe, . . . and from the earliest history of England has been treated as an offence against society." [Italics added.]; Prince v. Massachusetts (1943) 321 U.S. 158, 170 [parents can be prohibited from allowing their children to distribute religious literature even though this is a religious duty required in order to avoid "everlasting destruction at Armageddon" where necessary to protect the health and safety of youth]; Jacobson v. Massachusetts (1904) 197 U.S. 11, 26 [adults and children can be compelled to be vaccinated for communicable diseases even though their religious beliefs oppose vaccination because as was observed in Prince v. Massachusetts, supra, 321 U.S. at pp. 166-167, "[T]he right to practice religion freely does not include liberty to expose the community or the child to communicable disease or the latter to ill health or death"].)

But a less significant state interest may be enough where the burden is less direct or the form of expression less central to the exercise of the particular religion. (See, e.g., Goldman v. Weinberger (1986) 475 U.W. 503,509-510 where the military's apparently rather marginal interest in absolutely uniform attire was enough to justify an outright ban against a Jewish officer's apparently rather marginal form of religious expression in wearing a yarmulke [a religious cap] indoors.) In Bowen v. Roy (1986) 476 U.S. 693, disapproved on other grounds in Hobbie v. Unemployment Appeals Commission (1987) 480 U.S. 136, 141, the U.S. Supreme Court found the Federal government's interest in administrative convenience in preventing fraud in a benefit program was enough to justify the minimal burden of denying benefits to those who because of religious beliefs refuse to obtain and reveal social security numbers. Braunfeld v. Brown, supra, 366 U.S. 599 605 [governmental interest in prohibiting

economic activity on Sundays is enough to justify imposing the burden of an economic loss on those orthodox Jews who choose to exercise their religious belief that they not work on Saturdays and thus lose two rather than only one day's opportunity to earn money. "[T]he case before us . . . does not make unlawful any religious practices of appellants; the Sunday law simply regulates a secular activity and, as applied to appellants, operates so as to make the practice of their religious beliefs more expensive"], italics added.)

We now apply the above principle to the four courses of conduct alleged in Wollersheim's intentional infliction of emotional injury cause of action. To be entitled to constitutional protections under the Freedom of Religion clauses any course of conduct must satisfy three requirements. First, the system of thought to which the course of conduct relates must qualify as a "religion" not a philosophy or science or personal preference. Thus, it is unlikely a psychiatrist could successfully shield himself from malpractice by asserting he was merely practicing the "religion" of psychotherapy and following the "religious" teaching of Freud and Jung. Secondly, the course of conduct must qualify as an expression of that religion and not just an activity that religious people happen to be doing. Thus, driving a Sunday School bus does not constitute a religious practice merely because the bus is owned by a religion, the driver is an ordained minister of the religion, and the bus is taking church members to a religious ceremony. (See Malley v. Fong (1951) 37 Cal.2d 356, 373 [religious organization held liable for employee's negligent driving]; Meyers v. S.W. Reg. Con. Ass'n. of Seventh Day Adv. (La. 1956) 88 So.2d 381, 386 [First Amendment does not bar minister's workers' compensation action against church for injuries arising from auto accident which occurred when minister was traveling to church conference].) And, thirdly, the religious expression must not inflict so much harm that there is a compelling state interest in discouraging the practice which outweighs the values served by freedom of religion. Thus, the fact polygamy was a central practice of the Mormon religion was not enough to qualify it for constitutional

protection from state governments which desired to ban this practice.

This means we must first ask three questions as to each of the four courses of conduct Wollersheim alleged against Scientology. (1) Does Scientology qualify as a religion? (2) If so, is the course of conduct at issue an expression of the religion of Scientology? (3) If it is, does the public nevertheless have a compelling secular interest in discouraging this course of conduct even though it qualifies as a religious expression of the Scientology religion? After answering these three questions, however, the special circumstances of this case require us to ask a fourth. Did Wollersheim participate in this course of conduct voluntarily or did Scientology coerce his continued participation through the threat of serious sanctions if he left the religion?

The threshold question for all four courses of conduct is whether Scientology qualifies as a religion. As will be recalled, at the law-and-motion stage, a judge granted summary adjudication on this issue. That court ruled Scientology indeed was a religion. And at the trial stage, another judge reinforced this ruling by submitting the case to the jury with an instruction that Scientology is a religion.

As a result of the law-and-motion judge's decision on this question, evidence was not introduced at trial on the specific issue of whether Scientology is a religion. Given that vacuum of information, it would be presumptuous of this court to attempt a definitive decision on this vital question. We note other appellate courts have observed this remains a very live and interesting question. (See Founding Church of Scientology v. United States (D.C.Cir. 1969) 409 F.2d 1146, 1160-1161; Founding Church of Scientology v. Webster (D.C.Cir. 1986) 802 F.2d 1448, 1451 ["whether Scientology is a religious organization, a for-profit private enterprise, or something far more extraordinary [is] an intriguing question that this suit does not call upon us to examine . . . ."].) However, we have no occasion to go beyond a review of the summary adjudication decision the trial court reached at the law-and-motion stage. In reviewing this decision, we find that on

the evidence before the court the judge properly ruled Scientology qualifies as a religion within the meaning of the Freedom of Religion Clauses of the United States and California Constitutions.

This brings us to the remaining three questions as to each of the four courses of conduct: Is the conduct a "religious practice"? If so, is there a compelling secular interest in requiring compensation for the injuries attributable to that practice? If the constitutional immunity is not overridden by a compelling state interest in the ordinary situation, is it nevertheless stripped away here because the religion coerced the injured member into continuing his participation in the practice?

B. Even Assuming the Retributive Conduct Sometimes Called "Fair Game" Is a Core Practice of Scientology It Does Not Qualify for Constitutional Protection

As we have seen, not every religious expression is worthy of constitutional protection. To illustrate, centuries ago the inquisition was one of the core religious practices of the Christian religion in Europe. This religious practice involved torture and execution of heretics and miscreants. (See generally Peters, Inquisition (1988); Lea, The Inquisition of the Middle Ages (1961).) Yet should any church seek to resurrect the inquisition in this country under a claim of free religious expression, can anyone doubt the constitutional authority of an American government to halt the torture and executions? And can anyone seriously question the right of the victims of our hypothetical modern day inquisition to sue their tormentors for any injuries—physical or psychological—they sustained?

We do not mean to suggest Scientology's retributive program as described in the evidence of this case represented a full-scale modern day "inquisition." Nevertheless, there are some parallels in purpose and effect. "Fair game" like the "inquisition" targeted "heretics" who threatened the dogma and institutional integrity of the mother church. Once "proven" to be a "heretic," an individual was to be neutralized. In medieval times neutral-

ization often meant incarceration, torture, and death. (Peters, Inquisition, supra, pp. 57, 65-67, 87, 92-94, 98, 117-118, 133-134; Lea, The Inquisition of the Middle Ages, supra, pp. 181, 193-202, 232-236, 250-264, 828-829.) As described in the evidence at this trial the "fair game" policy neutralized the "heretic" by stripping this person of his or her economic, political and psychological power. (See, e.g., Allard v. Church of Scientology (1976) 58 Cal.App.3d 439, 444 [former church member falsely accused by Church of grand theft as part of "fair game" policy, subjecting member to arrest and imprisonment].)

In the instant case, at least, the prime focus of the "fair game" campaign was against the "heretic" Wollersheim's economic interests. Substantial evidence supports the inference Scientology set out to ruin Wollersheim's photography enterprise. Scientologists who worked in the business were instructed to resign immediately. Scientologists who were customers were told to stop placing orders with the business. Most significantly, those who owed money for previous orders were instructed to renege on their payments. Although these payments actually were going to a factor not Wollersheim, the effect was to deprive Wollersheim of the line of credit he needed to continue in business.

Appellants argue these "fair game" practices are protected religious expression. They cite to a recent Ninth Circuit case upholding the constitutional right of the Jehovah's Witness Church and its members to "shun" heretics from that religion even though the heretics suffer emotional injury as a result. (Paul v. Watchtower Bible & Tract Soc. of New York, supra, 819 F.2d 875.) In this case a former Jehovah's Witness sued the church and certain church leaders for injuries she claimed to have suffered when the church ordered all other church members to "shun" her. In the Jehovah Witness religion, "shunning" means church members are prohibited from having any contact whatsoever with the former member. They are not to greet them or conduct any business with them or socialize with them in any manner. Thus, there was a clear connection between the religious practice of "shunning" and Ms. Paul's emotional injuries.

Nonetheless, the trial court dismissed her case. The Ninth Circuit affirmed in an opinion which expressly held "shunning" is a constitutionally protected religious practice. "[T]he defendants, . . . possess an affirmative defense of privilege—a defense that permits them to engage in the practice of shunning pursuant to their religious beliefs without incurring tort liability." (Id. at p. 879.)

We first note another appellate court has taken the opposite view on the constitutionality of "shunning." (Bear v. Reformed Mennonite Church (Pa. 1975) 341 A.2d 105.) In this case the Pennsylvania Supreme Court confronted a situation similar to Paul v. Watchtower Bible & Tract Soc. of New York. The plaintiff was a former member of the Mennonite Church. He was excommunicated for criticizing the church. Church leaders ordered that all members must "shun" the plaintiff. As a result, both his business and family collapsed. The appellate court reversed the trial court's dismissal of the action, holding: "In our opinion, the complaint, . . . raises issues that the 'shunning' practice of appellee church and the conduct of the individuals may be an excessive interference within areas of 'paramount state concern,' i.e., the maintenance of marriage and family relationship, alienation of affection, and the tortious interference with a business relationship, which the courts of this Commonwealth may have authority to regulate, even in light of the `Establishment' and `Free Exercise' clauses of the First Amendment." (Bear v. Reformed Mennonite Church, supra, 341 A.2d at p. 107, emphasis in original.)

We observe the California Supreme Court has cited with apparent approval the viewpoint on "shunning" expressed in Bear v. Mennonite Church, supra, rather than the one adopted in Paul v. Watchtower Bible & Tract Soc. of New York, supra. (See Molko v. Holy Spirit Assn., supra, 46 Cal.3d 1092, 1114.) But even were Paul v. Watchtower Bible & Tract Soc. of New York the law of this jurisdiction it would not support a constitutional shield for Scientology's retribution program. In the instant case Scientology went far beyond the social "shunning" of its heretic, Wollersheim. Substantial evidence supports the conclusion Scientology leaders made the deliberate decision to ruin

Wollersheim economically and possibly psychologically. Unlike the plaintiff in Paul v. Watchtower Bible & Tract Soc. of New York, Wollersheim did not suffer his economic harm as an unintended byproduct of his former religionists' practice of refusing to socialize with him any more. Instead he was bankrupted by a campaign his former religionists carefully designed with the specific intent it bankrupt him. Nor was this campaign limited to means which are arguably legal such as refusing to continue working at Wollersheim's business or to purchase his services or products. Instead the campaign featured a concerted practice of refusing to honor legal obligations Scientologists owed Wollersheim for services and products they already had purchased.

If the Biblical commandment to render unto Caesar what is Caesar's and to render unto God what is God's has any meaning in the modern day it is here. Nothing in Paul v. Watchtower Bible & Tract Soc. of New York or any other case we have been able to locate even implies a religion is entitled to constitutional protection for a campaign deliberately designed to financially ruin anyone-whether a member or non-member of that religion. Nor have we found any cases suggesting the free exercise clause can justify a refusal to honor financial obligations the state considers binding and legally enforceable. One can only imagine the utter chaos that could overtake our economy if people who owed money to others were entitled to assert a freedom of religion defense to repayment of those debts. It is not unlikely the courts would soon be flooded with debtors who claimed their religion prohibited them from paying money they owed to others.

We are not certain a deliberate campaign to financially ruin a former member or the dishonoring of debts owed that member qualify as "religious practices" of Scientology. But if they do, we have no problem concluding the state has a compelling secular interest in discouraging these practices. (See pp. 14-17, supra.) Accordingly, we hold the Freedom of Religion guarantees of the U.S. and California Constitutions do not immunize these practices from civil liability for any injuries they cause to "targets" such as Wollersheim.

C. "Auditing" Is a Constitutionally Protected Religious Practice Where It Is Conducted in a Non-coercive Environment But Is Not Protected Where Conducted Under a Threat of Economic, Psychological and Political Retribution as It Was Here

Auditing is a process of one-on-one dialogue between a Scientology "auditor" and a Scientology student. The student ordinarily is connected to a crude lie detector, a so-called "E-Meter." The auditor asks probing questions and notes the student's reactions as registered on the E-Meter.

Through the questions, answers, and E-meter readings, the auditor seeks to identify the student's "n-grams" or "engrams." These "engrams" are negative feelings, attitudes, or incidents that act as blockages preventing people from realizing their full potential and living life to the fullest. Since Scientology holds the view people actually have lived many past lives over millions of years they carry "engrams" accumulated during those past lives as well as some from their present ones. Once the auditor identifies an "engram" the auditor and the student work to surface and eliminate it. The goal is to identify and eliminate all the student's engrams so he or she can achieve the state of "clear." Students can pass through several levels of "auditing" en route to ever higher states of "clear."

Auditing performs a similar function for Scientology as sermons and other forms of mass persuasion do for many religions. In those religions, ministers, priests or other clergy preach to the multitude in order to bring their adherents into line with the religion's principles. Scientology instead emphasizes a one-on-one approach—the "auditing" process—to accomplish the same purpose.

At the law-and-motion stage, the trial court granted summary adjudication that "auditing" is a "religious practice" of Scientology. Once again, our review of the trial court decision reveals that on the basis of the evidence before the court on that occasion, the ruling is correct. Thus for purposes of this appeal

we find "auditing" qualifies as a "religious practice" just as Scientology qualifies as a "religion."

Having found for purposes of this appeal that Scientology is a religion and auditing is a religious practice, we must next ask whether the state has a "compelling interest" in awarding compensation for any harm auditing may cause which outweighs the values served by the religious expression guarantees of the constitution.

We first note we have already held there was substantial evidence to support a jury finding that what happened during the "auditing" process, along with Scientology's other conduct toward Wollersheim, caused this particular adherent serious emotional injury. We further found substantial evidence Scientology leaders were aware of Wollersheim's psychological weakness and yet continued practices during auditing sessions which caused the kinds of psychological stress that led to his mental breakdown. Thus, there is adequate proof the religious practice of auditing caused real harm in this instance to this individual and that appellants' outrageous conduct caused that harm. Furthermore, there is sufficient evidence to support a conclusion that despite their knowledge auditing was aggravating Wollersheim's serious psychological problems appellants deliberately insisted he not seek help from professional psychotherapists. None of this, however, means auditing represents such a threat of harm to society that the state has a compelling interest in awarding compensation which overcomes the values served by the religious expression guarantees of the constitution.

To better understand why we conclude voluntary auditing may be entitled to immunity from liability for the emotional injuries it causes, consider some analogies. Assume Wollersheim were not a former Scientologist, but a former follower of one of the scores of Christian denominations. Further assume he sued on grounds a preacher's sermons filled him with such feelings of inferiority and guilt his manic-depressive condition was aggravated to the same degree Wollersheim contends auditing aggravated his mental illness in this case. Or assume another

Wollersheim sued another church for a similar emotional injury on grounds his mental illness had been triggered by what a cleric told him about his sins during a confession—or series of confessions. It is one of the functions of many religions to "afflict the comfortable"—to deliberately generate deep psychological discomfort as a means of motivating "sinners" to stop "sinning." Whether by "hell fire and damnation" preaching, "speaking in tongues," private chastising, or a host of subtle and not so subtle techniques religion seeks to make us better people.

Many of these techniques are capable of inflicting emotional distress severe enough that it is foreseeable some with psychiatric problems will "crack" or be driven into a deep depression. But the constitution values the good religion does for the many more than the psychological injury it may inflict on the few. Thus, it cannot tolerate lawsuits which might chill religious practices—such as auditing, "hell fire and damnation" preaching, confessions, and the like—where the only harm which occurs is emotional injury to the psychologically weak.

There is an element present in the instant case, however, that reduces the religious value of the "auditing" practices on Wollersheim and increases its harm to the community. This is the element of coercion. Scientology, unlike most other religions or organizations claiming a religious purpose, uses various sanctions and the threat of sanctions to induce continued membership in the Church and observance of its practices. These sanctions include "fair game", "freeloader debt" and even physical restraint. There was nothing in the evidence presented at this trial suggesting new recruits and members undergoing lower-level "auditing" were subject to sanctions if they decided to leave. Nor was there evidence these recruits or "lower level" auditors would be aware any program of sanctions even existed and thus might be intimidated by it. But there was evidence others, like Wollersheim, who rose to higher levels of auditing and especially those, like Wollersheim, who became staff members—the rough equivalent of becoming a neophyte priest or minister—were aware of these sanctions and what awaited them if they chose to "defect." Thus, their continued participation in

"auditing" and the other practices of Scientology was not necessarily voluntary.

Wollersheim was familiar with the whole spectrum of sanctions and indeed was the target of some during and after his affiliation with Scientology. He first learned of one of these forms of retribution, "fair game," in 1970. He also knew that, despite the Church's public rejection of the fair game practice, it continued to use fair game against targeted ex-Scientologists throughout the 1970's. Under Scientology's "fair game" policy, someone who threatened Scientology by leaving the church "may be deprived of property or injured by any means by a Scientologist . . . . [The targeted defector] may be tricked, sued or lied to or destroyed."

Wollersheim feared "fair game" would be practiced against him if he refused further auditing and left the Church of Scientology. As described in the previous section, those fears proved to be accurate. Scientology leaders indeed became very upset by his defection and retaliated against his business.

But "fair game" was not the only sanction which Scientology held over Wollersheim's head during his years as an "upper level" auditor and occasional staff member. Scientology also used a tactic called "freeloader debt" as a means of coercing Wollersheim's continued participation in the church and obedience to its practices. "Freeloader debt" was devised by Scientology founder L. Ron Hubbard as a means of punishing members who, inter alia, chose to leave the Church or refused to disconnect from a suppressive person.

"Freeloader debt" was accumulated when a staff member received Church courses, training or auditing at a reduced rate. The Church maintained separate records which listed the discounts allowed. If the member later chose to leave, he or she was presented with a bill for the difference between the full price normally charged to the public and the price originally charged to the member.[2] A person who stayed in the Church for five

[2] During the 1970's a staffmember was paid approximately $17 per week for

years could easily accumulate a "freeloader debt" of between $10,000 and $50,000. Wollersheim was familiar with the "freeloader debt" policy as well as the "fair game" policy. He also knew the Church was recording the courses and auditing sessions he was receiving at the discounted rate. The threat of facing that amount of debt represented a powerful economic sanction acting to coerce continued participation in auditing as the core religious practice of the Church of Scientology.

There also was evidence Wollersheim accepted some of his auditing under threat of physical coercion. In 1974, despite his repeated objections, Wollersheim was induced to participate in auditing aboard a ship Scientology maintained as part of its Rehabilitation Project Force. The Church obtained Wollersheim's attendance by using a technique dubbed "bait and badger." As the name suggests, this tactic deployed any number of Church members against a recalcitrant member who was resisting a Church order. They would alternately promise the "bait" of some reward and "badger" him with verbal scare tactics. In the instant case, five Scientologists "baited and badgered" Wollersheim continuously for three weeks before he finally gave in and agreed to attend the Rehabilitation Project Force.

But these verbal threats and psychological pressure tactics were only the beginning of Wollersheim's ordeal. While on the ship, Wollersheim was forced to undergo a strenuous regime which began around 6:00 A.M. and continued until 1:00 the next morning. The regime included mornings of menial and repetitive cleaning of the ship followed by an afternoon of study or co-auditing. The evenings were spent working and attending meetings or conferences. Wollersheim and others were forced to sleep in the ship's hole. A total of thirty people were stacked nine high in this hole without proper ventilation. During his six weeks under these conditions, Wollersheim lost 15 pounds.

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an expected 50 hours of work. In 1973, Wollersheim earned between $10 to $18 per week when he worked at the Celebrity Center as a staff member. This salary was augmented by an occasional $10 bonus

Ultimately, Wollersheim felt he could bear the regime no longer. He attempted to escape from the ship because as he testified later: "I was dying and losing my mind." But his escape effort was discovered. Several Scientology members seized Wollersheim and held him captive. They released him only when he agreed to remain and continue with the auditing and other "religious practices" taking place on the vessel.

One of the psychiatric witnesses testified that in her opinion Wollersheim's experience on the ship was one of five cataclysmic events underlying her diagnosis of his mental illness and its cause. As the psychiatrist reported, following this incident, Wollersheim felt the Church "broke him." In any event, this episode demonstrated the Church was willing to physically coerce Wollersheim into continuing with his auditing. Moreover they were willing to do so even when it was apparent this practice was causing him serious mental distress and he preferred to cease or at least suspend this particular religious practice. Not only was the particular series of auditng sessions on the ship conducted under threat of physical compulsion, but the demonstrated willingness to use physical coercion infected later auditing sessions. The fact the Church was willing to use physical coercion on this occasion to compel Wollersheim's continued participation in auditing added yet another element to the coercive environment under which he took part in the auditing process.

There was substantial evidence here from which the jury could have concluded Wollersheim was subjecting himself to auditing because of the coercive environment with which Scientology had surrounded him. To leave the church or to cease auditing he had to run the risk he would become a target of "fair game", face an enormous burden of "freeloader debt", and even confront physical restraint. A religious practice which takes place in the context of this level of coercion has less religious value than one the recipient engages in voluntarily. Even more significantly, it poses a greater threat to society to have coerced religious practices inflicted on its citizens.

There are important analogies to Molko v. Holy Spirit Assn., supra, 46 Cal.3d 1092. In Molko the California Supreme Court held a religious organization could be held civilly liable for using deception and fraud to seduce new recruits into the church.[3] In that case the church concealed from new recruits the fact they were enlisting in the Unification Church. The plaintiffs argued the Unification Church psychologically and physically coerced them into accepting the Church and, therefore, they were unable to refuse formally joining once the Church's true identity was revealed. (Id. at pp. 1108-1109.) The Supreme Court agreed and further concluded there was no constitutional infirmity to bar the action.

"We conclude, . . . that although liability for deceptive recruitment practices imposes a marginal burden on the Church's free exercise of religion, the burden is justified by the compelling state interest in protecting individuals and families from the substantial threat to public safety, peace and order posed by the fraudulent induction of unconsenting individuals into an atmosphere of coercive persuasion." (Id. at p. 1118.)

Here Scientology used coercion—"fair game," "freeloader debt," and in this instance, at least, physical restraint, along with the threat one or more of these sanctions will be deployed—to prevent its members from leaving the Church. This coercion is similar to the coercion found in Molko and far different from the threats of divine retribution our Supreme Court held was non-actionable. (Id. at pp. 1120, 1122 ["To the extent the claims are based merely on threats of divine retribution if [the plaintiffs] left the church, they cannot stand].) Instead, Scientology promised—and in this case delivered—retribution in the here and now.

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[3] In Molko, two plaintiffs brought actions against the Unification Church for, inter alia, fraud and intentional infliction of emotional distress based upon the Unification Church's initial misrepresentations concerning its religious affiliation. The Supreme Court held the First Amendment did not bar the plaintiffs' claims to the extent they were based upon actual coercive conduct by the Unification Church as opposed to merely the threat of divine retribution should the plaintiffs leave.

In O'Moore v. Driscoll (1933) 135 Cal.App.770 cited with approval by the California Supreme Court in Molko v. Holy Spirit Assn., supra, 46 Cal.3d 1092, 1114, a Catholic priest sued a Catholic organization and an ordained priest for false imprisonment when the plaintiff was restrained in an asylum run by the Catholic Church to compel his confession to criminal acts. The practice of confessing one's sins is an established religious practice of the Catholic church. But that did not immunize the defendants from liability for harm the plaintiff suffered where the religious practice was imposed on him in a coercive environment. (Id. at p. 774.)

In the instant case except for the experience on the ship the coercion was more subtle that physical restraint. Yet the threat of "fair game" and "freeloader debt" and even the possibility of future physical restraint loomed over Wollersheim whenever he contemplated leaving Scientology and terminating auditing or the other practices of that religion.

It is not only the acts of coercion themselves—the sabotage of Wollersheim's business and the episode of captivity on the ship—which are actionable. These acts of coercion and the threat of like acts make the Church's other harmful conduct actionable as well. No longer is Wollersheim's continued participation in auditing (or for that matter, his compliance with the "disconnect" order) merely his voluntary participation in Scientology's religious practices. The evidence establishes Wollersheim was coerced into remaining a member of Scientology and continuing with the auditing process. Constitutional guarantees of religious freedom do not shield such conduct from civil liability. We hold the state has a compelling interest in allowing its citizens to recover for serious emotional injuries they suffer through religious practices they are coerced into accepting. Such conduct is too outrageous to be protected under the constitution and too unworthy to be privileged under the law of torts.

We further conclude this compelling interest outweighs any burden such liability would impose on the practice of

auditing. We concede as the California Supreme Court did in Molko that allowing tort liability for this conduct imposes some burden on appellants' free exercise of this religion.[4] Despite the possibility of liability Scientologists can still believe it serves a religious purpose to impose and threaten to impose various sanctions on staff members or upper level auditors who might leave the church or cease its core religious practices. But it does place a burden on Scientologists should they act on that belief. Scientology would be subject to possible monetary loss if someone suffers severe psychological harm during auditing where that auditing is conducted under the threat of these sanctions. Likewise, Scientology may lose some staff members and upper level auditors who would not continue in the Church or continue to submit to the core practice of auditing except for their fears of retribution.

Like the Supreme Court in Molko, however, we find these burdens "while real, are not substantial" and, moreover, are the minimum required to achieve the state interest. To borrow from the high court's language in Molko: "Being subject to liability [for coerced auditing] does not in any way or degree prevent or inhibit [Scientologists] from operating their religious communities, worshipping as they see fit, freely associating with one another, selling or distributing literature, proselytizing on the street, soliciting funds, or generally spreading [L. Ron Hubbard's] message among the population. It certainly does not, . . . compel [Scientologists] to perform acts `at odds with fundamental tenets of their religious beliefs.' [Citation omitted.]" (Molko v. Holy Spirit Assn., supra, 46 Cal.3d 1092, 1117.)

Most significantly, by imposing liability in the instant

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[4] "While such liability does not impair the Church's right to believe in recruiting through deception, its very purpose is to discourage the Church from putting such belief into practice by subjecting the church to possible monetary loss for doing so. Further, liability presumably impairs the Church's ability to convert nonbelievers, because some potential members who would have been recruited by deception will choose not to associate with the Church when they are told its true identity." (Molko v. Holy spirit Assn., supra, 46 Cal. 3d 1092, 1117.)

case we "in no way or degree prevent or inhibit" Scientology from continuing the free exercise of the religious practice of auditing. Returning to the words of the Supreme Court: "At most, it potentially closes one questionable avenue for" coercing certain members to remain in the church and to continue its core practices such as auditing." (46 Cal.3d at p. 1117.)

D. The "Disconnect" Policy Is Not a Constitutionally Protected Religious Practice in the Circumstances of This Case

Substantial evidence supports the conclusion Scientology encouraged Wollersheim to "disconnect" from family members, including his wife and parents. Furthermore, substantial evidence supports the conclusion Scientology has a general policy of encouraging members to "disconnect" from non-Scientologists who oppose Scientology or express reservations about its teachings.

The first question is whether the "disconnect" policy qualifies as a "religious practice" of Scientology. The trial court did not grant summary adjudication on this factual issue. Nonetheless, we find the evidence supported the conclusion disconnect is a "religious practice." "Disconnect" is similar in purpose and effect to the "shunning" practiced by Jehovah's Witnesses and Mennonites, among others. It also shares some attributes with the remote monasteries common to many other religions. All of these practices serve to isolate members from those, including family members, who might weaken their adherence to the religion. Courts have held these policies qualify as "religious practices" of other religions. (See, e.g., Paul v. Watchtower Bible & Tract Soc. of New York, supra, 819 F.2d 875, 879-880; Rasmussen v. Bennet (Mont. 1987) 741 P.2d 755 [Church statements condemning plaintiffs' conduct and calling for shunning were privileged under the First Amendment].) We see no justification for treating Scientology's "disconnect" policy differently and thus hold it is a "religious practice".

We recognize the "shunning" cases have involved claims brought by former church members whom other family

members were ordered to shun. The instant case, in contrast, involves a cause of action brought by a former church member ordered to shun the rest of his family not the other way around. In the circumstances of this case this is a distinction without a difference. Here appellants caused Wollersheim to isolate himself from his parents, wife and other family members even though appellants had reason to know it would inflict serious emotional injury on him. The injury to him and to the family was just as severe as if his family had "shunned" him.

We need not and do not reach the question whether the practice of "disconnect" is constitutionally protected religious activity in ordinary circumstances. (Contrast Paul v. Watchtower Bible & Tract Soc. of New York, supra, 819 F.2d 875 [religion cannot be held civilly liable to shunned former member because "shunning" is constitutionally protected] with Bear v. Reformed Mennonite Church, supra, 341 A.2d 105 [religion may be civilly liable to shunned former member because "shunning" must yield to compelling state interest in promoting family relations].) Whether or not the "disconnect" policy is constitutionally protected when practiced in a voluntary context it is not so protected if practiced in the coercive environment appellants imposed on Wollersheim. The reasons are the same as apply to "auditing." (See pp. 30-39, supra.) Substantial evidence supports the finding Scientology created this coercive environment and Wollersheim continued to submit to the practices of the church such as "disconnect" because of that coercion. Furthermore, the evidence in the instant case is sufficient to support a factual finding appellants imposed the "disconnect" policy on Wollersheim with the knowledge he was psychologically susceptible and therefore would suffer severe emotional injury as a result. Accordingly, in the circumstances of this case, the free exercise clause did not immunize appellants from liability for the "disconnect" policy practiced on respondent.

E. Scientology's Improper Disclosure of Information Wollersheim Gave During Confidential Religious Sessions Is Not Religious Expression Immunized From Liability by the Constitution

There is substantial evidence Wollersheim divulged private information during auditing sessions under an explicit or implicit promise the information would remain confidential. Moreover, there is substantial evidence Scientology leaders and employees shared this confidential information and used it to plan and implement a "fair game" campaign against Wollersheim. Scientology argues there also is substantial evidence in the record supporting its defense that Scientology leaders and employees shared this confidential information only in accordance with normal procedures and for the purpose of gaining the advice and assistance of more experienced Scientologists in evaluating Wollersheim's auditing sessions. However, the jury was entitled to disregard this innocent explanation and to believe Wollersheim's version of how and why Scientology divulged information he had supplied in confidence.

The intentional and improper disclosure of information obtained during auditing sessions for non-religious purposes can hardly qualify as "religious expression." To clarify the point, we turn once again to a hypothetical situation which presents a rough analogy under a traditional religion. Imagine a stockbroker had confessed to a cleric in a confessional that he had engaged in "insider trading." Sometime later this same stockbroker leaves the church and begins criticizing it and its leadership publicly. To discredit this critic, the church discloses the stockbroker has confessed he is an insider trader. This disclosure might be said to advance the interests of the cleric's religion in the sense it would tend to discourage former members from criticizing the church. But to characterize this violation of religious confidentiality as "religious expression" would distort the meaning of the English language as well as the United States Constitution. This same conclusion applies to Scientology's disclosures of Wollersheim's confidences in the instant case. And, since these disclosures do not qualify as "religious expression" they do not qualify for protection under the freedom of religion guarantees of the constitution. (See Discussion at pp. 18-19, supra.)

III. THE CAUSE OF ACTION FOR NEGLIGENT INFLICTION OF EMOTIONAL INJURY MUST BE REVERSED

For reasons set forth in section II, we have concluded Scientology is not constitutionally immunized from civil liability for its cumulative course of conduct to intentionally inflict emotional injury on Wollersheim. However, this course of conduct does not supply a suitable predicate for a cause of action based on negligent infliction of emotional injury. These actions are potentially actionable only when they are driven by an animus which can properly qualify them as "outrageous conduct." That is, they must be done for the purpose of emotionally injuring the plaintiff, or at the least with reckless disregard about their adverse impact on plaintiff's mental health. (Nally v. Grace Community Church, supra, 47 Cal.3d 278,300; Miller v. National Broadcasting Co. (1986) 187 Cal.App.3d 1463, 1487.)

We have held in the prior section that Scientology and its leaders indeed engaged in these actions with an intent to emotionally injure Wollersheim. But this intentional activity was alleged in the intentional infliction of emotional injury count and was tried under that count. The negligence count, on the other hand, of necessity alleges a lesser degree of culpability and can be sustained only if the defendant could be liable even if the emotional injuries were caused by completely unintentional, merely negligent acts or omissions. (See Slaughter v. Legal Process Courier Service (1984) 162 Cal.App.3d 1236, 1249; 6 Witkin, Summary of Cal. Law (9th ed. 1988) Torts, S 838, p. 195.)

In this context, Scientology is responsible only if it or any other religion could be held liable where through inadvertence something it or its leaders did damaged someone's business and thereby caused the businessman emotional injury. Or if it or any other religion could be held liable where it inadvertently revealed some information a member had disclosed in confidence as part of a religious practice like auditing or a confession. Or if it or another religion could be held liable where its func-

tionaries inadvertently said something during auditing or a sermon or a confession which triggered a listener's nascent mental illness.

At bottom, this question of duty is a matter of weighing competing public policy considerations. (Dillon v. Legg (1968) 68 Cal.2d 728, 734; Ballard v. Uribe (1986) 41 Cal.3d 564, 572, fn.6.)[5] On balance, the religious freedom consideration outweighs any concern about spreading the cost of emotional injury, reducing the frequency of such emotional injuries, and the like. It is one thing to say we will impose liability when a religious organization intentionally or recklessly sets out to ruin a business or to reveal confidential information or to "audit" mercilessly or to "disconnect" a psychologically weak person from his family and thereby succeeds in emotionally injuring a member or former member of that religion. It is quite another to impose liability for negligent acts which inadvertently cause the same types of injuries. (See Coon v Joseph (1987) 192 Cal.App.3d 1269, 1273.)

Since we hold religious organizations owe no duty to members or former members with respect to these forms of injury, the cause of action for negligent infliction of emotional injury must be reversed. We need not, however, reverse the entire judgment.

Here, the jury found the Church liable for both negligent and intentional infliction of emotional distress. As we discussed above, there is substantial evidence to support a finding on the intentional infliction theory. We may fairly presume any damages awarded on the negligence theory are subsumed in the award for intentional infliction of emotional distress. Accordingly, any error in allowing the jury to consider the negligence theory does not affect the judgment. (See Vahey v. Sacia

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[5] "'[D]uty' is not an immutable fact of nature "'but only an expression of the sum total of those considerations of policy which lead the law to say that the particular plaintiff is entitled to protection.'" [Citation.]" (Ballard v. Uribe, supra, 41 Cal.3d at p. 572, fn. 6.)

(1981) 126 Cal.App.3d 171, 179-180; Bacciglieri v. Charles C. Meek Milling Co. (1959) 176 Cal.App.2d 822, 826.)

IV. THE TRIAL COURT PROPERLY DENIED APPELLANTS' MOTIONS TO DISMISS FOR FAILURE TO FILE BEFORE THE STATUTE OF LIMITATIONS HAD EXPIRED ON WOLLERSHEIM'S CAUSES OF ACTION

Scientology argues on appeal, as it did at virtually every opportunity below, that Wollersheim's causes of action are barred by the statute of limitations. At each and every juncture the various trial judges who heard these arguments rejected them. These judges ruled correctly that Wollersheim's causes of action were subject to the discovery rule. (3 Witkin, Cal. Procedure (3d ed. 1985) Actions, § 356, p. 383.) The issue in each instance, thus, was when Wollersheim discovered, or should have discovered, all of the elements of his cause of action against Scientology. (See Leaf v. City of San Mateo (1980) 104 Cal.App.3d 398, 407-408.) The trial judges properly ruled this issue, in turn, was a jury question. (Id. at p. 409.)

On appeal, this court is bound to uphold the jury's resolution of these factual questions unless we determine the findings are not supported by substantial evidence. After a careful review of the evidence, we conclude these findings about the timeliness of Wollersheim's filing of this case are supported by substantial evidence. Consequently, we affirm the rulings by the judges below and, furthermore, we likewise affirm the factual findings the jury impliedly made that Wollersheim did not discover and should not have discovered his causes of action until a time within the statutory period.

V. THE TRIAL COURT DID NOT COMMIT INSTRUCTIONAL ERROR OR EVIDENTIARY ERROR DURING THIS FIVE-MONTH TRIAL WHICH DENIED APPELLANTS A FAIR TRIAL OR DUE PROCESS OF LAW

Appellants' final contention is that they were denied a fair trial and due process of law because of various instructional

and evidentiary rulings the court made during this five-month trial. Considering the length of the trial it is surprising appellants were able to identify so few questionable rulings.

Appellants first complain the trial court erroneously denied two instructions they requested. The first of these instructions restated the elements of the cause of action for intentional infliction of emotional distress or outrageous conduct with a slant favoring appellants' position.[6]

As requested the instruction implied the jury was to disregard evidence of appellants' acts which did not fit precisely under the courses of conduct as they defined them. Actually the plaintiffs' causes of action were broader in many respects than the descriptions the appellants requested. Moreover, some of the evidence introduced at the trial related to acts relevant to issues of appellants' state of mind (intent, motivation, and the like) and whether respondent was voluntarily participating in Scientology's practices or was doing so within a coercive environment. Accordingly, the instruction as requested would have been misleading to the jury. The trial court gave an instruction which set forth the elements of the cause of action. Any amplification of that instruction should have been more accurate than

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[6] The requested instruction reads: "Plaintiff's claim for intentional infliction of emotional distress, or outrageous conduct, is divided into several parts. ¶First, plaintiff's claim that defendant engaged in outrageous conduct by subjecting plaintiff to its practice of auditing--which, as I shall instruct you, is the central religious practice of the religion of Scientology. ¶Second, plaintiff claims that defendant caused plaintiff to separate from his family and friends as a condition for remaining in Scientology. ¶Third, plaintiff claims that defendant 'attacked plaintiff's business' and induced those of his employees who were Scientologists to leave his employ. ¶Fourth, plaintiff claims that defendant disclosed his auditing files in disregard of alleged promises of confidentiality to persons not authorized to receive them. ¶All of these acts were allegedly undertaken to inflict severe emotional distress upon the plaintiff. ¶The plaintiff is restricted in this case to the claims he set forth in his complaint. Evidence of any purported acts of the defendant "not relating to the four categories I have just described to you may not be considered in determining whether plaintiff has established that defendant committed the tort of intentional infliction of emotional distress [App. A306-07]."

the one appellants requested and less misleading as to the full scope of the jury's range of inquiry. Thus it was not error to refuse to give this instruction.

Appellants also complain about the refusal of one of their requested instructions ordering the jury in very specific fashion to disregard evidence presented which was relevant to the non-suited fraud counts. Again, the requested instruction was stated in overbroad terms and unduly slanted in appellants' direction. For instance, as requested, it instructed the jury that "it must disregard evidence presented in this trial regarding statements purportedly made to [the plaintiff] to induce his participation in defendant church." If given, this instruction could have misled the jury into believing it must disregard evidence which provided context for the intentional infliction count or which went to the presence or absence of coercion and appellants' state of mind. So once again it was not error to refuse these instructions. (See Wank v. Richman & Garrett (1985) 165 Cal.App.3d 1103, 1113; Lubek v. Lopes (1967) 254 Cal.App.2d 63, 73.)

In any event, on reviewing the total evidence offered in this trial, we find that even if it were error to refuse these instructions that error was not prejudicial. (Henderson v. Harnischfeger (1974) 12 Cal.3d 663, 670; Williams v. Carl Karcher Enterprises, Inc. (1986) 182 Cal.App.3d 479, 489; see 9 Witkin, Cal. Procedure, supra, Appeal, § 352, pp. 355-356.) We cannot say that the giving of these instructions would have substantially enhanced the chances appellants would have prevailed.

Appellants likewise complain about evidentiary rulings. Although they mention only a handful of specific incidents, they accuse the judge of admitting a mass of prejudicial evidence about actions Scientology took toward third persons. In their brief appellants concede this evidence was admissible under Evidence Code section 1101(b) as proof of "intent" and "malice."[7] But they ask us to reverse the trial court under Evidence

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[7] "Nothing in this section prohibits the admission of evidence that a person committed a crime, civil wrong, or other act when relevant to prove some fact

Code section 352 on grounds the relevance of this evidence was overwhelmed by its prejudicial effect.[8]

In reviewing the trial court's exercise of its discretion under section 352, appellate courts traditionally give great deference to the trial court's evaluation of relevance versus prejudice. (See People v. Mota (1981) 115 Cal.App.3d 227, 234; 1 Johnson, Cal. Trial Guide (1988) § 22.40, p. 22-43.) In the instant case we do not find an abuse of discretion. Much of the evidence appellants object to was highly relevant to show the network of sanctions and coercive influences with which Scientology had surrounded Wollersheim. Much of the rest was highly relevant to show Wollersheim's state of mind while undergoing audit, disconnect and the like or appellants' state of mind, that is, their intent, malice, motives, and the like. Whatever prejudice to appellants may have accompanied introduction of this evidence it does not "substantially outweigh" the probative value of the evidence to important issues in this case.

Finally, appellants complain about the alleged prejudicial conduct of Wollersheim's counsel during the trial and closing argument. As was true of their claims of instructional and evidentiary evidence, appellants provide us with only a few examples of alleged prejudicial error and imply these are but the tip of the iceberg. They confine themselves to this handful of incidents either because no other potentially prejudicial incidents occurred or because they expect this court to do their job by scouring the 25,000 page record for other examples to bolster their claim of error. If what appellants set forth in their brief rep-

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(such as motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake or accident or whether a defendant in a prosecution for an unlawful sexual act or attempted unlawful sexual act did not reasonably and in good faith believe that the victim consented) other than his or her disposition to commit such an act." (Evid. Code,S 1101, sub. (b).

[8] "The court in its discretion may exclude evidence if its probative value is substantially outweighed by the probability that its admission will (a) necessitate undue consumption of time or (b) create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury." (Evid. Code, S 352, italics added.)

resent the only incidents they allege as prejudicial conduct, we find them insufficient to justify reversal under applicable standards of prejudice. (Garden Grove School Dist. v. Hendler (1965) 63 Cal.2d 141, 144 [attorney misconduct only requires reversal if "it is reasonable to conclude that a verdict more favorable to defendants would have been reached but for the error"]; see 9 Witkin, Cal. Procedure, supra, § 340, p. 346.) And if these brief examples were only an invitation to do appellants' work in identifying prejudicial error in their opposing attorney's conduct, we decline that invitation. (Horowitz v. Noble (1978) 79 Cal.App.3d 120, 139 ["'The reviewing court is not required to make an independent, unassisted study of the record in search of error or grounds to support the judgment'"]; Wint v. Fidelity & Casualty Co. (1973) 9 Cal.3d 257, 265.)

VI. THE GENERAL DAMAGES AND PUNITIVE DAMAGES THE JURY AWARDED ARE EXCESSIVE FOR THE INTENTIONAL INFLICTION OF EMOTIONAL INJURY COUNT AND THUS THOSE DAMAGE AWARDS MUST BE REDUCED

In the previous section, we concluded the allegations which are supported by substantial evidence are enough to sustain a cause of action for intentional infliction of emotional injury against Scientology. But that conclusion does not determine whether the proved allegations support the level of damages the jury awarded under this cause of action. We turn to that issue now.

We are only concerned now with whether a reasonable juror could have found this level of "outrageous" conduct inflicted $5 million worth of emotional injury on Wollershiem. Similarly, we ask whether this level of "outrageous" conduct and Scientology's degree of intent in carrying it out warrant $25 million in punitive damages. We conclude these awards are excessive for the conduct alleged and proved in this case.

An award for compensatory damages will be reversed or reduced "upon a showing that it is so grossly disproportionate to

any reasonable view of the evidence as to raise a strong presumption that it is based upon prejudice or passion." (Koyer v. McComber (1938) 12 Cal.2d 175, 182; accord Schroeder v. Auto Driveaway Co. (1974) 11 Cal.3d 908, 919 ["an appellate court may reverse an award only" 'When the award as a matter of law appears excessive, or where the recovery is so grossly disproportionate as to raise a presumption that it is the result of passion or prejudice' "[Citations]"]; Fagerguist v. Western Sun Aviation, Inc. (1987) 191 Cal.App.3d 709, 727; see 8 Witkin, Cal. Procedure, supra, Attack on Judgment in Trial Court, § 46, p. 446.) Even under this stringent standard, it is manifest the jury's award here is excessive since it is so grossly disproportionate to the evidence concerning Wollersheim's damages.

Wollersheim's psychological injury although permanent and severe is not totally disabling. Moreover, even Wollersheim admits Scientology's conduct only aggravated a pre-existing psychological condition; Scientology did not create the condition. While the jury awarded Wollersheim $5 million in compensatory damages, we determine the evidence only justifies an award of $500,000.

"It is well established that a reviewing court should examine punitive damages and, where appropriate, modify the amount in order to do justice." (Gerard v. Ross (1988) 204 Cal.App.3d 968, 980; Allard v. Church of Scientology, supra, 58 Cal.App.3d at p. 453.) In reviewing a punitive damages award, the appellate court applies a standard similar to that used in reviewing compensatory damages, i.e., whether, after reviewing the entire record in the light most favorable to the judgment, the award was the result of passion or prejudice. (See Bertero v. National General Corp. (1974) 13 Cal.3d 43, 64; Devlin v. Kearny Mesa AMC/Jeep/Renault, Inc. (1984) 155 Cal.App.3d 381, 388.) However, the test here is somewhat more refined, employing three factors to evaluate the propriety of the award.

The first factor is the degree of reprehensibility of the defendant's conduct. (Neal v. Farmers Ins. Exchange (1978) 21 Cal.3d 910, 928.) "[C]learly, different acts may be of varying

degrees of reprehensibility, and the more reprehensible the act, the greater the appropriate punishment, assuming all other factors are equal." (Ibid.)

The second factor is the relationship between the amount of the award and the actual harm suffered. (Ibid.; Seeley v. Seymour (1987) 190 Cal.App.3d 844, 867.) This analysis focuses upon the ratio of compensatory damages to punitive damages; the greater the disparity between the two awards, the more likely the punitive damages award is suspect. (Seeley v. Seymour, supra, 190 Cal.App.3d at p. 867; see Little v. Stuyvesant Life Ins. Co. (1977) 67 Cal.App.3d 451, 469-470.)

Finally, a reviewing court will consider the relationship of the punitive damages to the defendant's net worth. (Neal v. Farmers Ins. Exchange, supra, 21 Cal.3d at p. 928; Devlin v. Kearny Mesa AMC/Jeep/Renault, Inc., supra, 155 Cal.App.3d at p. 390.) In applying this factor courts must strike a proper balance between inadequate and excessive punitive damage awards. "While the function of punitive damages will not be served if the wealth of the defendant allows him to absorb the award with little or no discomfort, the function also will not be served by an award which is larger than necessary to properly punish and deter." (Devlin v. Kearney Mesa AMC/Jeep/Renault, Inc., supra, 155 Cal.App.3d at p. 391.)

As to the punitive damage award, we find it is not commensurate with Scientology's conduct in this case. This is not a situation where the centerpiece of the case involved a Church-ordered physical beating or theft or criminal fraud against Wollersheim. The "outrageous conduct" was less outrageous and more subtle than that. We further note Wollersheim's counsel in the full flood of his emotional summation at the conclusion of this lengthy trial only deigned to urge the jury to return punitive damages of as much as "six or seven million dollars."

The evidence admitted at trial supported the finding the appellant church had a net worth of $16 million at the time of trial. Accepting these figures as true, the jury awarded

Wollersheim 150 percent of appellant's net worth in punitive damages alone—195 percent if compensatory damages are included. This appears not just excessive but preposterous. (Seeley v. Seymour, supra, 190 Cal.App.3d at p. 869 [punitive damages reversed; award was 200 percent of defendant's net worth]; Burnett v. National Enquirer, Inc. (1983) 144 Cal.App.3d 991, 1012 [punitive damages reduced; initial award was 35 percent of defendant's net worth]; Egan v. Mutual of Omaha Insurance Co. (1979) 24 Cal.3d 809, 824 [punitive damages reversed; award was 58 percent of defendant's net income]; Allard v. Church of Scientology, supra, 58 Cal.App.3d at pp. 445-446, 453 [punitive damages reversed; award was 40 percent of defendant's net worth]; compare Devlin v. Kearney AMC/Jeep/Renault, Inc., supra, 155 Cal.App.3d at pp. 391-392 [punitive damages affirmed where award was 17.5 percent of defendant's net worth]; Schomer v. Smidt (1980) 113 Cal.App.3d 828, 836-837 [punitive damages affirmed; award was 10 percent of defendant's net worth]; Downey Savings & Loan Assn. v. Ohio Casualty Ins. Co. (1987) 189 Cal.App.3d 1072, 1100 [punitive damages affirmed; award was 7.2 percent of defendant's net income].) We find it especially excessive given the nature of the "outrageous conduct" in this particular case. Accordingly we reduce the punitive damage award to $2 million.

DISPOSITION

The judgment is reversed as to the cause of action for negligent infliction of emotional injury. The judgment as to the cause of action for intentional infliction of emotional injury is modified to reduce the compensatory damages to $500,000 and the punitive damages to $2 million. In all other respects the judgment is affirmed. Each party to bear its own costs on appeal.

CERTIFIED FOR PUBLICATION

JOHNSON, J.

We concur:

LILLIE, P.J.

WOODS (Fred), J.

APPENDIX B

IN THE COURT OF APPEAL OF
THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION SEVEN

No. B023193 (LASC No. C332827)

Larry Wollersheim,
Plaintiff and Respondent,

v.

Church of Scientology of California,
Defendant and Appellant.

THE COURT:

It is ordered that the opinion filed herein on July 18, 1989, be modified in the following particulars:

On page 2, line 4 of the first paragraph change the word "appellants" to "appellant." Thereafter, change the plural form "appellants" and "appellants'" to the singular form "appellant" and "appellant's" throughout the remainder of the opinion.

On page 2, line 9 of the first paragraph, change "they were" to "it was."

On page 7, line 1 of the second paragraph change "raise" to "raises".

On page 34, line 4 of the second paragraph change "church" to "Church."

On page 47, line 6 from the bottom of the page change "they were" to "it was." On line 2 from the bottom of the same

page change "were able" to "was able".

On page 48, line 1 change "complain" to "complains" and in line 2, change "they" to "it".

On page 48, line 3 of the second paragraph change "they" to "appellant".

On page 49, line 10 change "complain" to "complains" and in line 11 change "their" to "its".

On page 50, line 10 change "complain" to "complains"; in line 11 change "they mention" to "it mentions"; in line 12 change "they accuse" to "it accuses"; in line 14 change "their brief appellants concede" to "its brief appellant concedes" and in line 16 change "they ask" to "it asks."

On page 51, line 7 change "object" to "objects."

In the second paragraph on the same page, line 1 change the word, "complain" to "complains"; in line 3 change "their" to "its"; in line 4 change "provide" to "provides"; in line 6 change "They confine themselves" to "It confines itself"; in line 8 change "they expect" to "it expects" and in line 9 change "their" to "its."

On page 52, the first paragraph, line 1 change "their" to "its"; in line 2 change "set" to "sets", "their" to "its" and "they" to "it"; in line 3 change "allege" to "alleges" and line 11, change "their" to "its".

On page 56, line 7 replace the sentence commencing "This appears . . . ." with the following sentence:

This ratio is well outside the permissible range established in other appellate cases.

On the same page, the last two lines on the page, replace the sentence commencing "We find it . . . ." with the following

two sentences:

Respondent asserts appellant's true net worth approaches $250 million not $16 million and thus the punitive damage award is not excessive. However, respondent failed to prove the higher net worth figure at trial.

Appellant's petition for rehearing is denied. Respondent's petition for rehearing is denied.

No change in judgment.

CERTIFIED FOR PUBLICATION

APPENDIX C

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF LOS ANGELES

No. C332027

Larry Wollersheim,
Plaintiff,

v.

Church of Scientology
of California, et al
Defendants.

This action came on regularly for trial on February 19, 1986, in Department 55 of the Superior Court, the Honorable Ronald E. Swearinger Judge Presiding; the plaintiff(s) appearing by attorney(s) Charles O'Reilly and Leta Schlosser and the defendant(s) appearing by attorney(s) Earle Cooley, John Peterson, Paul Moore, and Robert Herke.

A jury of 12 persons was regularly inpaneled and sworn. Witnesses were sworn and testified. After hearing the evidence and arguments of counsel, the jury was duly instructed by the Court and the cause was submitted to the jury with directions to return a verdict on special issues. The jury deliberated and thereafter returned into court with its verdict consisting of the special issues submitted to the jury and the answers given thereto by the jury, which said verdict was in words and figures as follows, to-wit:

(Here quote entire Special Verdict With Special Findings Verbatim)

TITLE OF COURT AND CAUSE

We, the jury in the above entitled action, find with regard to Intentional Infliction of Emotional Distress di the plaintiff, Lawrence Dominick Wollersheim, discover or should he have discovered the facts which he alleges constituted Intentional Infliction of Emotional Distress before July 28, 1979?

No.

TITLE OF COURT AND CAUSE

We, the jury in the above entitled action, find for the plaintiff, Lawrence Dominick Wollersheim, and against the defendant, Church of Scientology of California, as follows:

A) On the Third Cause of Action (Intentional Infliction of Emotional Distress)

B) On the Fourth Cause of Action (Negligent Infliction of Emotional Distress)

We assess compensatory damages in the sum of $5,000,000.00

We assess punitive damages as to the Third Cause of Action (Intentional Infliction of Emotional Distress) in the sum of $25,000,000.00;

We do not assess punitive damages as to the Third Cause of Action (Intentional Infliction of Emotional Distress).

Dated: July 22, 1986

Andre A. Anderson
Foreman

APPENDIX D

ORDER DENYING REVIEW
AFTER JUDGMENT BY THE COURT OF APPEAL

Second Appellate District,
Division Seven, No. B023193 S011790

IN THE SUPREME COURT OF
THE STATE OF CALIFORNIA

LARRY WOLLERSHEIM, Respondent

v.

CHURCH OF SCIENTOLOGY OF CALIFORNIA, Appellant

Appellant's and respondent's petitions for review DENIED.

October 26, 1989

APPENDIX E

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; . . ." (U.S. Const., Amend. I).

APPENDIX F

COERCIVE PERSUASION

Coercive persuasion, brainwashing and thought reform are alternative names for a type of attitude change and behavior modification process described in the literature of psychology, psychiatry and sociology. This phenomenon has also been identified by the term, a coordinated program of coercive influence and behavior control. The latter term refers to the generally agreed upon elements of the process. The coercive persuasion process is one in which a person is exposed to and manipulated by an influence system designed and/or intended to induce a substantial change in the person's perception of reality and involve the individual in a group organized in certain ways. The result of accomplishing these changes makes it possible to exercise considerable control over the individual's behavior without their knowledge or volition.

Programs identified by any of the above listed descriptions have in common the elements of attempting to greatly modify a person's self-concept, perceptions of reality, and interpersonal relations. When successful in inducing these changes, thought reform programs also create the potential for exercising significant control over a person's independent decision-making ability.

The relationship between the person and the influencing system is DYNAMIC in that while the pressures, rewards, and punishments brought to bear on the person are significant, they do not lead to a stable self-chosen re-organization of beliefs or attitudes. Rather, they lead to a sort of compliance and a situationally required elaborate rationalization for the new conduct. In order to maintain the new attitudes, sustain the rationalization and shape a person's behavior over time, coercive influence must be more or less CONTINUOUSLY applied.

A coercive persuasion program is composed of a series of intentional acts, conduct, and relationships by and between

persons. In legal terminology, coercive persuasion contains a collection of behaviors some, or much, of which can be classed as constituting acts of undue influence, deception, fraud, coercion, the intentional infliction of emotional distress, outrageous conduct, and other tortuous acts.

Coercive persuasion, and thought reform are coordinated programs of coercive influence and behavior control designed to **deceptively** and **surreptitiously** manipulate and influence persons, usually in a group setting, in order for the originators of the program to profit from the results of that undue influence.

The law is familiar with one-on-one undue influence such as in the instance of the nurse who unduly influences an aged, ill man to leave his fortune to her. Here we are speaking of programs containing many tortuous acts applied to groups BY GROUPS OR ORGANIZATIONS.

The past half century has seen the development of behavioral change technologies designed to be applied to groups of persons to effect extraordinary control over them.

The law is primarily worded to class the effects of one-on-one undue influence and related torts. Recently a number of cases have been, and will no doubt continue to be, presented to the courts in which coercive persuasion programs have been constructed and applied to groups. The content varies with some programs involving psychological, religious, political, health, fad, and other contents. It IS possible to study and view the processes, completely separate from the beliefs, ideas, or contents being promulgated.

The strategy used by those operating such programs is to systematically select, sequence and coordinate numerous influence tactics over PERIODS OF TIME in order to unduly influence and effect extraordinary degrees of control over individuals regardless of the particular content promulgated.

CHARACTERISTICS OF COERCIVE PERSUASION

Some of the characteristics (mechanisms) that distinguish this type of coercive influence situation from other examples of planned influence procedures (i.e., sales programs, recruitment schemes, political campaigns, peaceful persuasion, etc.) are the following:

1. Intense and frequent attempts are made to undermine a person's confidence in himself and his judgment.

2. Frequent and intense attempts are made to cause a person to re-evaluate the self and prior conduct in negative ways.

3. Efforts are made to establish considerable control over a person's social environment and sources of social support. Social isolation is promoted. Contact with family and friends is abridged, as is contact with persons who do not share group approved attitudes. Economic, and other dependence on the group is fostered.

4. Disconfirming information and non-supporting opinions are prohibited in group communication. Rules exist about permissible topics to discuss with outsiders. Communication is highly controlled. An-"in-group" language is usually constructed.

5. Non-physical punishments are used such as humiliation, loss of privilege, social isolation, social status changes, guilt manipulation and other techniques for creating aversive emotional arousals, etc.

6. Certain threats are present: that failure to adopt the approved attitude, belief, or consequent behavior will lead to severe punishment or dire consequences (e.g., physical or mental illness, the reappearance of a prior physical illness, drug dependence, economic collapse, social failure, divorce, disintegration, failure to find a mate, etc.).

7. These programs of course contain many activities of AN INNOCUOUS NATURE, as well as the more tortuous conducts described previously. They also contain a variety of tactics used to increase influence and SUGGESTIBILITY such as the use of prestige figures, various hypnotic trance induction techniques, excessive repitition of routine activities, extended visual fixation exercises, decreased sleep, long hours, food or nutritional restriction, etc.

Not all individuals exposed to coercive persuasion or thought reform programs are persuaded to become participants. Individual psychological and physiological differences along with the degree of severity in which the various characteristics and mechanisms of a coercive persuasion program are applied, determine the program's effectiveness and/or the degree of damage caused to its victims.

Individuals unknowlingly, as well as those voluntarily subjected to a successful coercive persuasion program can have a convincing "appearance" of sincerity and often provide elaborate rationalizations for their new conduct. Where the antecedents that lead to change of ideas or beliefs are coercive persuasion practices, the individual's feelings of "sincerity" and "good faith" must be suspect until it can be determined that the individual had sufficient knowledge and independent volitional capacity to make such a decision, and whether the individual was able, in fact, to adopt or affirm those beliefs on his own.

Erratum

Page 6 paragraph 3, change "Prior to" to "After".